



Kimberly L. Bick  
kbick@bicklawgroup.com

520 Newport Center Drive, Suite 370  
Newport Beach, CA 92660  
949-220-0760

Direct: 949-220-0775

January 15, 2016

VIA EMAIL AND OVERNIGHT DELIVERY

Craig Whitenack  
United States Environmental Protection Agency  
Region IX, Southern California Field Office  
600 Wilshire Avenue, Suite 1460  
Los Angeles, California 90017

Re: CERCLA Section 104(e) Request for Information: Orange County Metal  
Processing Superfund Removal Site, Fullerton, California

Dear Mr. Whitenack:

This letter and attachment is submitted in response to your letter dated November 18, 2015, requesting information from a dissolved entity, PCA Industries, LLC, and one of its former officers, Mr. Robert Winters, concerning any knowledge they have regarding the Orange County Metal Processing ("OCMP") Superfund Removal Site, located at 1711 E. Kimberly Avenue, Fullerton, California ("the OCMP Site"). My firm represents Mr. Winters, who is responding to EPA's request for information on behalf of the dissolved entity, PCA Industries, LLC, as a former officer of the dissolved entity.

Pursuant to your November 30, 2015 email to my colleague Gabriel Padilla, the deadline for this response has been extended to January 15, 2016. Pursuant to our telephone discussion on December 2, 2015 and your follow up email to me on December 3, 2015 the scope of EPA's request has been limited at this time to Questions 5 and 13.

I also confirmed with you during our December 2, 2015 phone call that EPA's investigation and removal costs are restricted to the OCMP Site, located at 1711 E. Kimberly Avenue, not the former PCA Industries site, located at 1726 Rosslyn Avenue ("PCA Industries Site"). EPA has not indicated that any of its investigation or the response costs it has incurred relate to the PCA Industries Site. PCA Industries, LLC conducted a complete site remediation and closure at the PCA Industries Site after PCA Industries, LLC ceased operations and before it dissolved.

Also, as we discussed on December 2, 2015, EPA's request for information is posed to PCA Industries, LLC not to Mr. Winters as an individual. Mr. Winters is responding to the November 18, 2015 EPA request for information on behalf of PCA Industries, LLC to the best of his ability in his capacity as a *former* officer of the dissolved entity PCA

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Industries, LLC. As we discussed, Mr. Winters is not potentially liable as an individual for contamination arising from or related to the OCMP Site or the PCA Industries Site.

PCA Industries, LLC is not liable for contamination arising from or related to the OCMP Site. The PCA Industries Site and the OCMP Site are separate and distinct sites. PCA Industries, LLC and OCMP are separate and distinct companies. PCA Industries, LLC and OCMP have never been affiliated or related companies and do not share any officers, directors, managers, or employees. PCA Industries, LLC has never had any control over any of OCMP's operations at the OCMP Site. To the extent PCA Industries, LLC was a sub-lessor of the OCMP Site, PCA Industries, LLC did not direct activities or control operations at the OCMP Site. PCA Industries, LLC does not fall into any of the four categories for types of liable parties at the OCMP Site under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). PCA Industries, LLC is not a current owner or operator of the OCMP Site, a past owner or operator of the OCMP Site at the time of hazardous waste disposal, a generator or arranger of waste disposed of at the OCMP Site, or a transporter of hazardous waste sent to the OCMP Site. 42 U.S.C. §9607(a).

Importantly, as we also discussed on the phone, and as is further discussed in the attached response to EPA's 104(e) Request Question 5, PCA Industries, LLC (in the name of Pacific Coast Alloy, LLC) dissolved on April 2, 2014, with no remaining assets, upon filing its Certificate of Cancellation with the California Secretary of State. A copy of the dissolution filing is attached to the response to Question 5. Therefore, even if potentially liable for contamination at the OCMP Site, which it is not, PCA Industries, LLC is dissolved and no longer a viable entity. Any alleged CERCLA liability that could be applied to PCA Industries, LLC should be treated as an orphan share.

Upon dissolution, PCA Industries, LLC's assets were used, in their entirety, to close the facility, remove all equipment, and remediate the PCA Industries Site. No assets remained to be distributed on the date of dissolution. Because PCA Industries, LLC dissolved without assets in 2014, there is no entity with financial means to pay for EPA's responses or actions or oversight or requests for information on behalf of PCA Industries, LLC. In addition, PCA Industries, LLC did not have any insurance policies that would provide coverage for environmental claims.

# PRVY-Controlled/Privacy



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## PRVY-Controlled/Privacy

Enclosed please find Responses to Questions 5 and 13 of EPA's Request for Information. We reserve the right to supplement these responses if we obtain any new information in the future. By submitting this response, PCA Industries, LLC does not admit to any liability and reserves all defenses.

The attached Responses to Questions 5 and 13 contain exhibits, which are attached as PDFs and will also be shipped to you in hard copy format.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

Kimberly Bick

klb

Enc.

cc: Robert Winters  
David Peterson

WINEPA001167

PCA Industries, LLC Response to EPA's Request for Information  
Regarding the Orange County Metal Processing Superfund Removal Site  
1711 E. Kimberly Avenue Fullerton, CA

**INTRODUCTORY STATEMENT**

PCA Industries, LLC provides the following response to the United States Environmental Protection Agency's ("EPA") November 18, 2015 information request letter for the Orange County Metal Processing ("OCMP") Superfund Removal Site, located at 1711 E. Kimberly Avenue, Fullerton, California (the "OCMP Site"). The OCMP Site is separate and distinct and the operations are completely unrelated to the former PCA Industries, LLC site, located at 1726 Rosslyn Avenue, Fullerton, California (the "PCA Industries Site").

At any rate, PCA Industries, LLC, also known as Pacific Coast Alloy LLC, is a dissolved entity. See Exhibit D-8 and D-9. PCA Industries, LLC exhausted all of its remaining assets when it conducted a complete site remediation and closure at the PCA Industries Site after PCA Industries, LLC ceased operations and before it dissolved. Therefore, PCA Industries, LLC has no assets to pay for the cost and fees to respond to EPA's information request, or any future demands. This response is prepared by PCA Industries, LLC's former officer, Mr. Robert Winters, to the best of his ability. Mr. Winters is personally incurring the cost of this response, which is unduly burdensome to him as an individual with no personal liability.

Mr. Winters is not a former officer or director or shareholder or in any way connected to the management of OCMP or the operations at the OCMP Site. Therefore, his knowledge as a former officer of PCA Industries, LLC is limited to the PCA Industries Site; he is not in a position to respond to questions pertaining to the OCMP Site.

It is our understanding that EPA is seeking information concerning the OCMP Site because of ongoing EPA oversight of removal and remediation actions at that site. EPA has not indicated that it is conducting ongoing oversight of the PCA Industries Site, which has been fully characterized and remediated to the satisfaction of the state of California. Again, the two sites are separate and distinct.



## OBJECTIONS

For purposes of this response, PCA Industries, LLC interprets the term “Site” to be the OCMP Site located at 1711 E. Kimberly Avenue, Fullerton, California.<sup>1</sup> PCA Industries, LLC does not operate, and has never operated, at that location, nor have any of its predecessors or affiliated businesses operated at that location. For purposes of this response, PCA Industries, LLC interprets the terms “you” and “yours” to refer to PCA Industries, LLC.

The entity referred to by EPA as Orange County Metal Plating is Orange County Metal Processing, Inc. Hereinafter, this response assumes EPA intended Question 13 to request information pertaining to Orange County Metal Processing, Inc. and this response will refer to this entity as “OCMP.”

PCA Industries, LLC objects to this request for information to the extent it asks for information that is privileged or contains confidential business information. PCA Industries, LLC further objects to the request to the extent it seeks information and documents already in EPA’s possession or that are equally accessible to EPA. PCA Industries, LLC objects that EPA’s information request contains undefined or improperly defined terms rendering the questions vague, ambiguous, overbroad and unduly burdensome including, but not limited to, the terms “Site,” “you,” “your,” “affiliated businesses,” “commercial enterprises,” “your business,” “documents,” “related documents,” and “relationships.”

PCA Industries, LLC’s objections are continuing in nature and apply to each and every response to EPA’s request for information. In the event additional information is obtained, PCA Industries, LLC will provide a supplemental response. Notwithstanding these objections, PCA Industries, LLC provides the responses set forth below.

PCA Industries, LLC is not liable for any response costs incurred at the OCMP Site. PCA Industries, LLC does not currently and has never owned or operated the OCMP Site. PCA Industries, LLC’s past role as a temporary sub-lessor to OCMP is insufficient to impose liability under CERCLA section 107(a). By providing the responses herein, PCA Industries, LLC does not waive, but rather expressly reserves, its right to assert any and all defenses to any potential CERCLA liability at the Site.

<sup>1</sup> Hereinafter, the terms Site and OCMP Site may be used interchangeably, but in all instances refer only to the property located at 1711 E. Kimberly Avenue, Fullerton, California.

## RESPONSES

Pursuant to email correspondence from EPA dated December 3, 2015, PCA Industries, LLC's response to the request for information is limited to Questions 5 and 13 at this time.

### Question 5:

*Identify and explain the present corporate status (e.g., active, suspended, defunct, merged or dissolved) of your business and any and all of your predecessors, subsidiaries, affiliated businesses or commercial enterprises, including any entity operating or doing business as PCA Metal Finishing, Inc. that operates or operated at the Site, as well as the current and all former business forms used by such entity or entities (e.g., sole proprietorship, general partnership, limited partnership, joint venture or corporation). State the entire time period during which such entity or entities operated under each separate business form.*

- a. Identify the State in which the business was incorporated, formed or organized. Provide a copy of the Articles of Incorporation, Partnership Agreement, Articles of Organization, Bylaws, and any other documentation demonstrating the particular business form, together with any and all amendments, for all business forms under which each entity identified above is or was ever operated.*
- b. For corporate entities identified above, identify the names of all officers and directors for the period covering the formation of each corporation to the date of this request.*
- c. Identify all fictitious business names, assumed names or names under which you or any of your predecessors, subsidiaries, operating divisions, plants or branches conducted business at the Site and identify the time period during which each business operated.*

### Response To Question No. 5:

PCA Industries, LLC and its related entities do not operate, and have never operated, at the Site that is the subject of this question.

The following table sets forth the corporate information requested by EPA's information request number 5 and its subparts for PCA Industries, LLC and its predecessors, subsidiaries, affiliated businesses or commercial enterprises, which have operated at the PCA Industries Site as PCA Metal Finishing, Inc. or otherwise since approximately April 30, 1997.

<b>Business Name</b>	<b>Present Status</b>	<b>Business Form</b>	<b>Period of Operation</b>	<b>State of Incorporation or Organization</b>	<b>Officers and Directors</b>	<b>Names Under Which Entity Conducted Business</b>
PCA Metal Finishing, Inc. (purchased by AFX Wheels, Inc. on Apr. 30, 1997)	Dissolved on August 13, 2001	Corporation	Approx. April 30, 1997 to August 13, 2001	California	Robert H. Winters and Peter Gilbert	PCA Metal Finishing, Inc.
AFX Wheels, Inc. (later known as PCA Industries)	Dissolved as PCA Industries on August 14, 2001	Corporation	Approx. April 30, 1997 to August 14, 2001	California	Robert H. Winters and Peter Gilbert	PCA Metal Finishing, Inc., PCA Industries, and PCA Industries, Inc. <sup>2</sup>
PCA Industries (fka AFX Wheels, Inc.)	Dissolved on August 14, 2001	Corporation	Approx. December 31, 1998 to August 14, 2001	California	Robert H. Winters, Peter Gilbert and Anthony Rezzuti	PCA Metal Finishing, Inc., PCA Industries, and PCA Industries, Inc.
Pacific Coast Alloy LLC (organized as PCA Alloy LLC)	Dissolved April 2, 2014	Limited Liability Company	Approx. August 15, 2001 to August 14, 2002	California	Robert H. Winters, Kelly Erskine and Peter Gilbert	PCA Metal Finishing, Inc. and PCA Industries, LLC
PCA Industries, LLC (aka Pacific Coast Alloy LLC)	Dissolved April 2, 2014	Limited Liability Company	Approx. August 15, 2002 to late 2007	California	Robert H. Winters, Kelly Erskine and Peter Gilbert	PCA Metal Finishing, Inc. and PCA Industries, LLC

<sup>2</sup> It appears that on several documents, including those obtained from the California Secretary of State, PCA Industries, a California corporation, was identified as PCA Industries, Inc. However, the inclusion of "Inc." on such documents seems to have been in error. While a "PCA Industries, Inc." appears on the Secretary of State website as having been incorporated on July 28, 1986 and as a currently suspended corporation, such corporation is unrelated to PCA Industries, LLC and its related entities at issue here.

To further explain the corporate history, below is a timeline for each entity:

PCA Metal Finishing, Inc.:

- On July 28, 1980, PCA Metal Finishing, Inc. filed Articles of Incorporation with the state of California. See Exhibit A-1. At that time, PCA Aerospace, Inc. owned PCA Metal Finishing, Inc.
- On April 30, 1997, PCA Aerospace, Inc. sold all shares of PCA Metal Finishing Inc. to AFX Wheels, Inc. in a Stock Purchase Agreement. See Exhibit B.
- On August 13, 2001, PCA Metal Finishing, Inc. filed a Certificate of Dissolution and all known debts and liabilities were assumed by Pacific Coast Alloy LLC. See Exhibit A-6.
- On December 3, 2015, a Certificate of Status was issued for PCA Metal Finishing, Inc. indicating the current status of the company is dissolved. See Exhibit A-7.

PCA Industries, a California corporation (formerly AFX Wheels, Inc.):

- On January 31, 1996, AFX Wheels, Inc., filed Articles of Incorporation with the state of California. See Exhibit C-1.
- On April 30, 1997, PCA Aerospace, Inc. sold AFX Wheels, Inc. all issued and outstanding shares of capital stock of PCA Metal Finishing, Inc. See Exhibit B.
- On December 31, 1998, AFX Wheels, Inc. filed a Certificate of Amendment of Articles of Incorporation with the state of California, formally changing its name to PCA Industries, a California corporation. See Exhibit C-4.
- On August 14, 2001, PCA Industries, a California corporation, filed a Certificate of Dissolution and Pacific Coast Alloy LLC assumed PCA Industries', a California corporation, known debts and liabilities. See Exhibit C-7.
- On December 9, 2015, a Certificate of Status was issued for PCA Industries, a California corporation, indicating the current status of the company is dissolved. See Exhibit C-8.

Pacific Coast Alloy LLC (formerly PCA Alloy LLC):

- On December 30, 1997, Pacific Coast Alloy LLC was organized in the state of California as PCA Alloy LLC. See Exhibit D-1.
- On March 26, 1998, PCA Alloy LLC filed a Certificate of Amendment with the California Secretary of State, formally changing its name to Pacific Coast Alloy LLC. See Exhibit D-3.
- On August 13, 2001, Pacific Coast Alloy LLC assumed all known debts and liabilities upon the dissolution of PCA Metal Finishing, Inc. See Exhibit A-6.
- On August 14, 2001, Pacific Coast Alloy LLC assumed all known debts and liabilities upon the dissolution of PCA Industries, a California corporation. See Exhibit C-7.
- On August 15, 2002, Pacific Coast Alloy LLC filed a Certificate of Amendment changing its name to PCA Industries, LLC. See Exhibit D-5.

- On April 2, 2014, Pacific Coast Alloy LLC filed a Certificate of Cancellation (despite the prior name change to PCA Industries, LLC). See Exhibit D-8.
- On December 3, 2015, a Certificate of Status was issued for Pacific Coast Alloy LLC indicating the current status of the company is cancelled. See Exhibit D-9.
- The name change to PCA Industries, LLC was never used to file federal or state tax returns. PCA Industries, LLC and Pacific Coast Alloy LLC appear to be the same entity, with the same California Secretary of State File Number 199736410026. The corporate records for PCA Industries, LLC are included in the files obtained from the California Secretary of State for Pacific Coast Alloy LLC. See Exhibit D.

Despite the convoluted name changes and corporate history, each entity that previously owned or operated a business at the PCA Industries Site ultimately became subsumed into the entity (PCA Industries, LLC/Pacific Coast Alloy LLC) that dissolved without assets. No entity responsible for the operation of the PCA Industries Site remains viable at this time.

All corporate records related to the following entities are provided in the attached identified exhibits:

<b>Entity</b>	<b>Exhibit</b>
PCA Metal Finishing, Inc.	Exhibit A
Purchase and Sale of PCA Metal Finishing, Inc.	Exhibit B
PCA Industries (a California corporation)	Exhibit C
Pacific Coast Alloy LLC, formerly PCA Alloy LLC (also known as PCA Industries, LLC)	Exhibit D

**Question 13:**

*Provide an explanation of your relationship with Manuel Reynoso and Orange County Metal Plating ("OCMP") and the details regarding your agreement to sublease space at the Site to Mr. Reynoso and OCMP, including the dates and terms of the sublease. Provide an accounting of any payments received by you pursuant to the sublease. Provide copies of any sublease agreements and any related documents.*

**Response To Question No. 13:**

Because PCA Industries, LLC has been out of business for years, all remaining records were in storage. Mr. Winters conducted a diligent search and the following information and supporting documentation is all that he could locate as a result of that search.

PCA Metal Finishing, Inc. and Mr. Manuel Reynoso's relationship was strictly a business (landlord-tenant) relationship.

On information and belief, the entity referred to by EPA as Orange County Metal Plating is Orange County Metal Processing, Inc. Hereinafter, this response assumes EPA intended Question 13 to request information pertaining to Orange County Metal Processing, Inc. and this response will refer to this entity as "OCMP." OCMP began operating metal finishing operations at 1711 E. Kimberly Avenue and 1726 E. Rosslyn Avenue beginning in 1961. These properties have been owned by the Baker Development Company (or related entities) from at least 1961 to present. In 1961, Colin Baker originally built metal finishing facilities to be operated by OCMP on 1711 E. Kimberly Avenue and 1726 E. Rosslyn Avenue. In 1971 the two properties were split into two separate business operations, with OCMP operating at 1711 E. Kimberly Avenue.

Prior to 1995, we have no record of OCMP's lease or sublease of 1711 Kimberly Avenue. However, on information and belief, OCMP operated a business on 1711 E. Kimberly Avenue prior to 1995.

On January 1, 1995, PCA Metal Finishing, Inc. (owned by PCA Aerospace, Inc., an entity unrelated to PCA Industries, LLC) signed a sublease with OCMP for 1711 E. Kimberly Avenue. See Exhibit E.

On April 30, 1997, AFX Wheels, Inc. purchased PCA Metal Finishing, Inc. from PCA Aerospace, Inc., and assumed the obligations in the January 1, 1995 sublease agreement between PCA Metal Finishing, Inc. and Orange County Metal Processing, Inc. See Exhibit B.

On August 31, 1999, the sublease agreement expired. We have no record of any subleases post-dating the expiration of the January 1, 1995 sublease agreement; however, on information and belief, Orange County Metal Processing, Inc. continued operating the subleased premises on a month-to-month tenancy.

From the few records Mr. Winters was able to locate, on June 11, 2001, Richard C. Ackerman, an attorney for PCA Metal Finishing, Inc., sent Manuel Reynoso a Thirty-Day Termination Notice terminating Orange County Metal Processing, Inc.'s month-to-month tenancy with PCA Metal Finishing, Inc. See Exhibit E-1. The Thirty-Day Termination Notice was served on Mr. Reynoso on June 12, 2001. See Exhibit E-2. Unfortunately, the records are sparse and there is no documentation that any action was taken against Mr. Reynoso after the Thirty-Day Termination Notice was served.

The original January 1, 1995 sublease agreement between OCMP and PCA Metal Finishing, Inc., set the monthly rent in the amount of \$14,856.00. The annualized rent set forth in the table was calculated based on available financial statements and general ledgers. The ledgers typically do not identify the source of the rental income, and in some cases rent from sources other than OCMP may have been included. Because we do not have information on the other sources, we assumed the only rent attributable to OCMP would be up to \$14,856.00 per month and annualized the amount accordingly below as an "accounting of payments" in response to Question 13. The ledgers and financial records contain extensive information that would need to be redacted and are not responsive to this request and for that reason are not provided as an exhibit at this time. Payments from OCMP were irregular, and in some months/years were not paid at all, after the Notice of Termination in 2001.

Summarized in the table below is an accounting of recorded payments received by PCA Metal Finishing, Inc., Pacific Coast Alloy LLC, and PCA Industries, LLC from OCMP pursuant to the sublease.

<b>Year</b>	<b>Rent Paid at End of Year 12/31</b>
07/31/1996-06/30/1997	\$178,272.00
1998	\$178,272.00
1999	\$178,272.00
2000	\$178,272.00
2001	No Record
01/01/2002-05/26/2002	\$74,280
2003	\$178,272.00
2004	\$178,272.00
2005	\$178,272.00
2006	\$178,272.00
2007	No Record
2008	\$178,272.00
2009	\$5,757.60 (security deposit)
2010	\$2,500.00
2011	No Record
2012	No Record
2013	No Record

Pacific Coast Alloy LLC/PCA Industries, LLC dissolved in 2014 with an uncollected accounts receivable amount of \$134,864.04 for past rent owed by OCMP. Although the back rent shows up on the 2013 balance sheet as anticipated "accounts receivable," the money was never collected and did not translate into profits or assets of the dissolved entity prior to or post-dissolution.

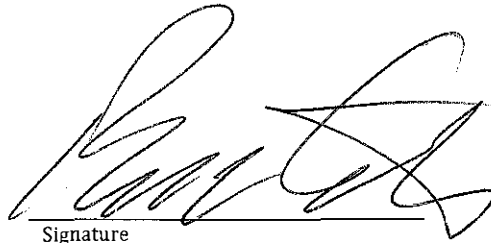


PCA Industries, LLC's Response to EPA's Request for Information  
Regarding Orange County Metal Processing Superfund Removal Site  
1711 E. Kimberly Avenue Fullerton, California

**DECLARATION OF ROBERT WINTERS**

I declare under penalty of perjury that I am responding on behalf of Respondent PCA Industries, LLC as a former officer of that dissolved entity and that the foregoing is true and correct, to the best of my knowledge at this time.

Executed on January 15, 2016



Signature

Robert H. Winters

Type or Print Name



Title

Exhibits to PCA Industries, LLC Response to EPA's Request for Information Regarding the  
Orange County Metal Processing Superfund Removal Site  
1711 E. Kimberly Avenue Fullerton, CA

PCA Metal Finishing, Inc. Corporate Records & Related Documents.....	Exhibit A
Articles of Incorporation of PCA Metal Finishing, Inc., filed July 28, 1980.....	Exhibit A-1
Bylaws of PCA Metal Finishing, Inc., adopted on July 28, 1980.....	Exhibit A-2
Action By Directors of PCA Metal Finishing, Inc., dated July 30, 1980 and June 30, 1982 .....	Exhibit A-3
Statement of Information of PCA Metal Finishing, Inc., filed May 9, 1997 .....	Exhibit A-4
Statement of Information of PCA Metal Finishing, Inc., filed May 4, 2001 .....	Exhibit A-5
Certificate of Dissolution of PCA Metal Finishing, Inc., filed August 13, 2001 .....	Exhibit A-6
Certificate of Status of PCA Metal Finishing, Inc., dated December 3, 2015 .....	Exhibit A-7
Purchase and Sale of Shares of PCA Metal Finishing, Inc., by and between PCA Aerospace, Inc., and AFX Wheels, Inc., dated April 30, 1997.....	Exhibit B
PCA Industries (a California corporation) Corporate Records & Related Documents.....	Exhibit C
Articles of Incorporation of AFX Wheels, Inc., filed January 31, 1996 .....	Exhibit C-1
Bylaws of AFX Wheels, Inc., adopted on May 15, 1997 .....	Exhibit C-2
Minutes of Action of Board of Directors of AFX Wheels, Inc., dated May 15, 1997 .....	Exhibit C-3
Certificate of Amendment of Articles of Incorporation of AFX Wheels, Inc., filed December 31, 1998 .....	Exhibit C-4
Statement of Information of PCA Industries dated filed March 8, 2013 .....	Exhibit C-5
Statement of Information of PCA Industries dated March 30, 2001.....	Exhibit C-6
Certificate of Dissolution of PCA Industries filed August 14, 2001 .....	Exhibit C-7
Certificate of Status of PCA Industries dated December 9, 2015.....	Exhibit C-8
Pacific Coast Alloy LLC Corporate Records & Related Documents.....	Exhibit D
Articles of Organization of PCA Alloy LLC filed December 30, 1997 .....	Exhibit D-1
Operating Agreement for PCA Alloy LLC adopted on December 29, 1997 .....	Exhibit D-2
Certificate of Amendment of PCA Alloy LLC filed March 26, 1998.....	Exhibit D-3
Operating Agreement for Pacific Coast Alloy LLC adopted on December 30, 1997.....	Exhibit D-4
Certificate of Amendment of Pacific Coast Alloy LLC filed August 15, 2002 .....	Exhibit D-5
Statement of Information for PCA Industries, LLC filed January 26, 2004.....	Exhibit D-6
Statement of Information for PCA Industries, LLC filed March 5, 2008 .....	Exhibit D-7
Certificate of Cancellation of Pacific Coast Alloy LLC filed April 2, 2014.....	Exhibit D-8
Certificate of Status of Pacific Coast Alloy LLC dated December 3, 2015.....	Exhibit D-9
Standard Industrial/Commercial Single-Tenant Lease by and between PCA Metal Finishing, Inc. and Orange County Metal Processing, Inc., dated January 1, 1995.....	Exhibit E
Thirty-Day Termination Notice to Orange County Metal Processing from PCA Metal Finishing, Inc., dated June 11, 2001 .....	Exhibit E-1
Letter to R. Winters from R. Ackerman (Attorney for PCA Metal Finishing, Inc.) re Orange County Metal Processing's Thirty Day Termination Notice dated June 29, 2001.....	Exhibit E-2

# Exhibit A

# Exhibit A-1

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FILED

In the office of the Secretary of State  
of the State of California

JUL 28 1980

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ARTICLES OF INCORPORATION

OF

PCA METAL FINISHING, INC.

ARTICLE I

The name of this corporation is:

PCA METAL FINISHING, INC.

ARTICLE II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE III

The name and address in this state of this corporation's initial agent for service of process is:

JAMES C. HART, JR.

225 Oregon Street

El Segundo, California 90245

Tel. (213) 772-5435

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ARTICLE IV

This corporation is authorized to issue an aggregate of One Thousand (1,000) shares of a single class of capital stock, \$1.00 Par Value, which shall be designated Common Stock. No distinction shall exist between the shares of the corporation or the holders thereof with respect thereto.

Signed this 28th day of July, 1980.

  
\_\_\_\_\_  
DAVID T. DANA III  
Incorporator

The undersigned does hereby declare and acknowledge that he is the person who executed the foregoing Articles of Incorporation as the incorporator of the corporation named therein and does hereby further declare and acknowledge that his execution of said Articles is his act and deed as said incorporator.

Signed on this 28th day of July, 1980.

  
David T. Dana III

# Exhibit A-2

BY LAWS  
OF  
PCA METAL FINISHING, INC.  
(a California Corporation)

ARTICLE I

Offices

Section 1.1 Principal Executive Office. The principal executive office of the corporation is located at:

225 Oregon Avenue, El Segundo, California

Section 1.2 Other Offices. Other business offices may at any time be established by the Board of Directors at any place or places where the corporation is qualified to do business.

ARTICLE II

Meetings of Shareholders

Section 2.1 Place of Meetings. All meetings of shareholders shall be held at the principal executive office of the corporation, or at any other place within or without the State of California which may be designated either by the Board of Directors or by the written consent of all persons entitled to vote and not present at the meeting, given either before or after the meeting and filed with the Secretary of the corporation.

Section 2.2 Annual Meetings. The annual meeting of shareholders shall be held on the second Tuesday in March of each year at 10:00 a.m.; provided, however, that should that day fall upon a legal holiday, then the annual meeting of shareholders shall be held at the same time and place on the next day thereafter ensuing which is a full business day. At the annual meeting



directors shall be elected, reports of the affairs of the corporation shall be considered, and any other business may be transacted which is within the powers of the shareholders.

Section 2.3 Notice. Written notice of each shareholder meeting shall be given to each shareholder of record on the record date, either personally or by mail or other means of written communication, charges prepaid, addressed to the shareholder at his address appearing on the books of the corporation or given by him to the corporation for the purpose of notice. If any notice or report addressed to the shareholder at the address of the shareholder appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the shareholder, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the shareholder upon written demand of the shareholder at the principal executive office of the corporation for a period of one year from the date of the giving of the notice or report to all other shareholders. If a shareholder gives no address, notice shall be deemed to have been given him if sent by mail or other means of written communication addressed to the place where the principal executive office of the corporation is situated, or if published, at least once in a newspaper of general circulation in the county in which the principal executive office is located.

Notice shall be given to each shareholder entitled thereto not less than ten days nor more than sixty days before each annual meeting. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication.

The notice shall state:

- (a) The place, the date, and the hour of the meeting;
- (b) Those matters which the Board, at the time of the mailing of the notice, intends to present for action by the shareholders;
- (c) If directors are to be elected, the names of nominees intended at the time of the notice to be presented by management for election;
- (d) The general nature of a proposal, if any, to take action with respect to approval of, (i) a contract or other transaction with an interested director, (ii) amendment of the Articles of Incorporation, (iii) a reorganization of the corporation as defined in Section 181 of the General Corporation Law, or (iv) voluntary dissolution of the corporation; and

(e) In case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted at the meeting.

Section 2.4 Special Meetings. Special meetings of the shareholders may be called at any time by the Chairman of the Board or the President, or by the Board of Directors, or by holders of shares entitled to cast not less than ten percent of the votes at the meeting. Upon request in writing that a special meeting of shareholders be called for any proper purpose, directed to the Chairman of the Board, President, Vice President or Secretary by any person (other than the Board) entitled to call a special meeting of shareholders, the officer forthwith shall cause notice to be given to shareholders entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, not less than 35 nor more than 60 days after receipt of the request.

Section 2.5 Quorum. The presence in person or by proxy of the persons entitled to vote a majority of the voting shares at any meeting shall constitute a quorum for the transaction of business. The shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment; notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

Section 2.6 Adjourned Meeting and Notice Thereof. Any shareholders' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the shares, the holders of which are either present in person or represented by proxy.

When any shareholders' meeting, either annual or special, is adjourned for 45 days or more, or if after adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as provided above, it shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted thereat, other than by announcement of the time and place thereof at the meeting at which adjournment is taken.

Section 2.7 Record Date. The Board of Directors may fix a time in the future as a record date for the determination of the shareholders entitled to notice of and to vote at any meeting of shareholders or entitled to give consent to corporate action in writing, without a meeting, to receive any report to receive any dividend or distribution or any allotment of rights, or to exercise rights in respect to any change, conversion, or exchange of shares. The record date so fixed shall be not more than 60 days nor less than 10 days prior to the date of any meeting, nor more than 60 days

prior to any other event for the purposes of which it is fixed. When a record date is so fixed, only shareholders of record on that date are entitled to notice of and to vote at the meeting, to give consent without a meeting, to receive any report, to receive a dividend, distribution, or allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date.

If a record date for voting purposes is not fixed, then only persons in whose names shares entitled to vote stand on the stock records of the corporation at the close of business on the business day next preceding the day on which notice of the meeting is given or if the notice is waived, at the close of business on the business day next preceding the day on which the meeting of shareholders is held, shall be entitled to vote at the meeting, and that day shall be the record date for the shareholders' meeting.

Section 2.8 Voting. Vote at any shareholders' meeting may be voice vote or by ballot; provided, however, that all elections for director must be by ballot upon demand made by a shareholder before the voting begins.

If a quorum is present, except with respect to election of directors, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on any matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the General Corporation Law or the Articles of Incorporation. Subject to the requirements of the next sentence, every shareholder entitled to vote at any election for directors shall have the right to cumulate his votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which his shares are entitled, or to distribute his votes on the same principle among as many candidates as he shall think fit. No shareholder shall be entitled to cumulative votes unless the name of the candidate or candidates for whom such votes would be cast has been placed in nomination prior to the voting, and any shareholder has given notice at the meeting prior to the voting, of that shareholder's intention to cumulate his votes. The candidates receiving the highest number of votes of shares entitled to be voted for them, up to the number of directors to be elected, shall be elected.

Section 2.9 Validation of Defectively Called or Noticed Meetings. The transactions of any meeting of shareholders, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, or who, though present, has, at the beginning of the meeting, properly objected to the transaction of any business because the meeting was not lawfully called or convened, or to particular matters of business legally required to be included in

the notice, but not so included, signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes thereof. All waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 2.10 Action Without Meeting. Directors may be elected without a meeting by a consent in writing setting forth the action taken, signed by all of the persons who would be entitled to vote for the election of directors, provided that, without notice except as hereinafter set forth, a director may be elected at any time to fill a vacancy not filled by the directors by the written consent of persons holding a majority of the outstanding shares entitled to vote for the election of directors.

Any other action which, under any provision of the California General Corporation Law, may be taken at a meeting of the shareholders, may be taken without a meeting, and without notice except as hereinafter set forth, if a consent in writing, setting forth the action taken, is signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote were present and voted. Unless the consents of all shareholders entitled to vote have been solicited in writing,

- (a) Notice of any proposed shareholder approval of, (i) a contract or other transaction with an interested director, (ii) indemnification of an agent of the corporation as authorized by Section 3.16, of Article III, of these By Laws; (iii) a reorganization of the corporation as defined in Section 181 of the General Corporation Law, or (iv) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, if any, without a meeting by less than unanimous written consent, shall be given at least 10 days before the consummation of the action authorized by the approval; and
- (b) Prompt notice shall be given of the taking of any other corporate action approved by shareholders without a meeting by less than unanimous written consent,

to those shareholders entitled to vote who have not consented in writing. Notices shall be given in the manner provided in Section 2.3 of Article II of these By Laws.

Unless the Board of Directors has fixed a record date for the determination of shareholders entitled to notice of and to give written consent, the record date for determination shall be the day

on which the first written consent is given. All written consents shall be filed with the Secretary of the corporation.

Any shareholder giving a written consent, or the shareholder's proxyholders, or a transferee of the shares of a personal representative of the shareholder or their respective proxyholders, may revoke the consent by a writing received by the corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the Secretary of the corporation, but may not do so thereafter. Revocation is effective upon its receipt by the Secretary of the corporation.

Section 2.11 Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by one or more agents authorized by a written proxy executed by the person or his duly authorized agent and filed with the Secretary of the corporation. Any proxy duly executed is not revoked and continues in full force and effect until (i) an instrument revoking it or a duly executed proxy bearing a later date is filed with the Secretary of the corporation prior to the vote pursuant thereto, (ii) the person executing the proxy attends the meeting and votes in person, or (iii) written notice of the death or incapacity of the maker of the proxy is received by the corporation before the vote is counted; provided that no proxy shall be valid after the expiration of 11 months from the date of its execution, unless the person executing it specifies therein the length of time for which the proxy is to continue in force. In no event shall a proxy be considered irrevocable unless the proxy states it is irrevocable and it is held by a person specified in Section 705(e) of the California General Corporation Law, in which event it is irrevocable for the period specified in the writing. The dates contained on the forms of proxy presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which they are mailed.

Section 2.12 Inspectors of Election. In advance of any meeting of shareholders, the Board of Directors may appoint any persons other than nominees for office as inspectors of election to act at the meeting or any adjournment thereof. If inspectors of election be not so appointed, the chairman of the meeting may, and on the request of any shareholder or his proxy shall, make the appointment at the meeting. The number of inspectors shall be either one or three. If appointed at a meeting on the request of one or more shareholders or proxies, the majority of shares represented in person or by proxy shall determine whether one or three inspectors are to be appointed. In case any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may, and on the request of any shareholder or a shareholder's proxy shall, be filled by appointment by the Board of Directors in advance of the meeting, or at the meeting by the chairman of the meeting.

The duties of the inspectors shall be as prescribed by Section 707 of the General Corporation Law and shall include: Determining the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the authenticity, validity and effect of proxies; receiving votes, ballots or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining when the polls shall close; determining the result; and other acts as may be proper to conduct the election or vote with fairness to all shareholders.

If there are three inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all.

### ARTICLE III

#### Directors

Section 3.1 Powers. The business and affairs of the corporation shall be managed by the Board of Directors.

Section 3.2 Number of Directors. The authorized number of directors is 3. However, so long as the corporation has only 1 shareholder, the number of directors may be 1, and so long as the corporation has only 2 shareholders, the number of directors may be 2.

Section 3.3 Election and Term of Office. The directors shall be elected at each annual meeting of shareholders. All directors shall hold office until their respective successors are elected, subject to the General Corporation Law and the provisions of these By Laws with respect to vacancies on the Board.

Section 3.4 Vacancies. A vacancy in the Board of Directors shall exist upon the death, resignation or removal of any director, if the authorized number of directors be increased, or if the shareholders fail to elect the full authorized number of directors. If a director has been declared of unsound mind by order of court or convicted of a felony, the Board of Directors may declare the office vacant.

Vacancies in the Board of Directors, except for a vacancy created by removal, may be filled by a majority of the directors then in office, whether or not less than a quorum, or by a sole remaining director. Each director so elected shall hold office until his successor is elected by the shareholders. A vacancy in the Board of Directors created by removal may only be filled by the vote or consent of a majority of the outstanding shares entitled to vote.

Any director may resign effective upon written notice to the Chairman of the Board, the President, the Secretary or the Board of Directors of the corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, the Board or the shareholders may elect a successor to take office when the resignation becomes effective.

No reduction of the authorized number of directors shall have the effect of removing any director before the expiration of his term of office.

Section 3.5. Place of Meeting. Meetings of the Board of Directors may be held at any place within or without the state which has been designated in the notice of the meeting, or if not designated in the notice, designated by resolution of the Board or by written consent of all members of the Board.

Section 3.6. Organization Meeting. Immediately following each annual meeting of shareholders, the Board of Directors shall hold a regular meeting at the place of the annual shareholders' meeting or at such other place as may be designated by the Board of Directors, for the purpose of organization, election of officers, and the transaction of other business. Notice of the meeting need not be given.

Section 3.7 Regular Meetings. Regular meetings of the board of directors shall be held without call at such time as shall from time to time be fixed by the Board of Directors. Such regular meetings may be held without notice.

Section 3.8. Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board, the President, the Secretary or any two directors.

Section 3.9. Notice of Meetings. Written notice of the time and place of special meetings shall be delivered personally to each director or communicated to each director by telephone, telegraph or mail, charges prepaid, addressed to him at his address as it is shown upon the records of the corporation or, if it is not shown on the records or is not readily ascertainable, at the place at which the meetings of the directors are regularly held. Notice shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Notice personally or by telephone or telegraph shall be given at least 48 hours before the time of the holding of the meeting.

Notice need not be given to any director who signs a waiver of notice, whether before or after the meeting, or who attends the

meeting without protesting, prior thereto or at its commencement, the lack of notice.

Section 3.10. Action Without Meeting. Any action by the Board of Directors may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to the action. Any written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 3.11. Quorum. A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in the meeting can hear one another. Every act done by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, except as otherwise provided by law, by the Articles of Incorporation, or by these By Laws. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of a director, provided that any action taken is approved by at least a majority of the required quorum.

Section 3.12. Validation of Defectively Called or Noticed Meetings. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be valid if a quorum is present and if, either before or after the meeting, each of the directors not present or protesting the meeting signs a written waiver of notice or a consent to holding the meeting or an approval of the minutes thereof. All waivers, consents or approvals shall be made a part of the minutes of the meeting.

Section 3.13. Adjournment. A majority of the directors present may adjourn any directors' meeting to meet again at a stated day and hour.

Section 3.14. Notice of Adjournment. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given before the time of the adjourned meeting to the directors who were not present at the time of adjournment. Otherwise, notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place be fixed at the meeting adjourned.

Section 3.15. Fees and Compensation. Directors and members of committees may receive compensation for their services, and reimbursement for expenses, as may be fixed or determined by resolution of the Board of Directors; provided that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.



Section 3.16. Indemnification of Agents of the Corporation; Purchase of Liability Insurance.

(a) For the purposes of this section, "agent" means any person who is or was a director, officer, employee or other agent of this corporation, or is or was serving at the request of this corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of this corporation or of another enterprise at the request of the predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes, without limitation, attorneys' fees and any expenses of establishing a right to indemnification under subsection (d) or subsection (e)(3) of this section.

(b) This corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding (other than an action by or in the right of this corporation) by reason of the fact that such person is or was an agent of this corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding if the person acted in good faith and in a manner the person reasonably believed to be in the best interests of this corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of this corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) This corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action by or in the right of this corporation to procure a judgment in its favor by reason of the fact that the person is or was an agent of this corporation, against expenses actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith, in a manner the person believed to be in the best interests of this corporation and with that care, including reasonable inquiry, as an ordinarily prudent

person in a like position would use under similar circumstances. No indemnification shall be made under this subsection (c):

(1) In respect to any claim, issue or matter as to which the person shall have been adjudged to be liable to this corporation in the performance of that person's duty to this corporation, unless and only to the extent that the court in which the action was brought shall determine upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court shall determine;

(2) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(3) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval.

(d) To the extent that an agent of this corporation has been successful on the merits in defense of any proceeding referred to in subsection (b) or (c) or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subsection (d), any indemnification under this section shall be made by this corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subsection (b) or (c) by:

(1) A majority vote of a quorum consisting of directors who are not parties to such proceeding;

(2) Approval of ratification by the affirmative vote of a majority of the shares of this corporation entitled to vote represented at a duly held meeting at which a quorum is present or by the written consent of holders of a majority of the shares entitled to vote, with the shares owned by the person to be indemnified not being entitled to vote; or

(3) The court in which the proceeding is or was pending, upon application made by this corporation or the agent or the attorney or other

person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by this corporation.

(f) Expenses incurred in defending any proceeding may be advanced by this corporation before the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay the amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this section.

(g) Nothing contained in this section shall affect any right to indemnification to which persons other than directors and officers of this corporation or any subsidiary hereof may be entitled by contract or otherwise.

(h) No indemnification or advance shall be made under this section, except as provided in subsection (d) or subsection (e)(3), in any circumstances where it appears:

(1) That it would be inconsistent with a provision of the Articles of Incorporation, By Laws, a resolution of the shareholders or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

(i) The Board of Directors may purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in that capacity or arising out of the agent's status whether or not this corporation would have the power to indemnify the agent against the liability.

#### ARTICLE IV

##### Committees of the Board

Section 4.1 Designation, Power, Alternate Members and Term of Office. The Board of Directors may, by resolution passed by a majority of the entire Board, designate one or more committees, each committee to consist of two or more of the directors of the corporation. Any committee, to the extent provided in a resolution

of the Board of Directors, shall have all the authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it, except with respect to:

(a) The approval of any action for which the General Corporation Law or the Articles of Incorporation also require shareholder approval;

(b) The filling of vacancies on the Board or on any committee;

(c) The fixing of compensation of the directors for serving on the Board or on any committee;

(d) The adoption, amendment or repeal of By Laws;

(e) The amendment or repeal of any resolution of the Board;

(f) Any distribution to the shareholders, except at a rate or in a periodic amount or within a price range determined by the Board; and

(g) The appointment of other committees of the Board or the members thereof.

The Board may designate one or more directors as alternate members of any committee, who, in the order specified by the Board, may replace any absent or disqualified member at any meeting of the committee. If at a meeting of any committee one or more of the members thereof should be absent or disqualified, and if either the Board of Directors has not so designated any alternate member or members, or the number of absent or disqualified members exceeds the number of alternate members who are present at the meeting, then the member or members of the committee (including alternates) present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another director to act at the meeting in place of any absent or disqualified member. The term of office of the members of each committee shall be as fixed from time to time by the Board, subject to these By Laws; provided, however, that any committee member who ceases to be a member of the Board shall, ipso facto, cease to be a committee member. Each committee shall appoint a secretary who may be the Secretary of the corporation or any Assistant Secretary thereof.

Section 4.2. Meetings, Notices and Records. Each committee may provide for the holding of regular meetings, with or without notice, and may fix the time and place at which the meetings shall be held. Special meetings of each committee shall be held upon call by or at the direction of its chairman or, if there be no chairman, by or at the direction of any two of its members, at the

time and place specified in the respective notices or waivers of notice thereof. Notice of each special meeting of a committee shall be mailed to each member of that committee, addressed to him at his residence or usual place of business, at least two days before the day on which the meeting is to be held, or shall be sent by telegram, radio or cable, addressed to him at that place, or telephoned or delivered to him personally, not later than the day before the day on which the meeting is to be held. Notice of any meeting of a committee need not be given to any member thereof who shall attend the meeting in person or who shall waive notice thereof by telegram, radio, cable or other writing. Notice of any adjourned meeting need not be given. Each committee shall keep a record of its proceedings.

Section 4.3 Quorum and Manner of Acting. At each meeting of any committee the presence of one-third but not less than two of its members then in office, shall be a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee; in the absence of a quorum, a majority of the members present at the time and place of any meeting may adjourn the meeting from time to time until a quorum shall be present. Subject to the foregoing and other provisions of these By Laws and except as otherwise determined by the Board of Directors, each committee may make rules for the conduct of its business. Any determination made in writing and signed by all the members of a committee shall be as effective as if made by the committee at a meeting.

Section 4.4. Resignations. Any member of a committee may resign at any time by giving written notice of resignation to the Board of Directors, the Chairman of the Board, the President or the Secretary of the corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt by the Board or the officer.

Section 4.5. Removal. Any member of any committee may be removed at any time by the Board of Directors with or without cause.

Section 4.6. Vacancies. If any vacancy shall occur in any committee by reason of death, resignation, removal or otherwise, the remaining members of the committee though less than a quorum, shall continue to act until the vacancy is filled by the Board of Directors.

Section 4.7. Compensation. Committee members shall receive reasonable compensation for their services, whether in the form of salary or a fixed fee for attendance at meetings, with expenses, if any, as the Board of Directors may from time to time determine. Nothing herein contained shall be construed to preclude any committee member from serving the corporation in any other capacity and receiving compensation therefor.

## ARTICLE V

### Officers

Section 5.1. Number. The officers of the corporation shall be a President, a Secretary, and a Treasurer. The corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 5.3. Any number of offices may be held by the same person.

Section 5.2. Election, Term of Office and Qualifications. Each officer (except officers as may be appointed in accordance with the provisions of Section 5.3) shall be elected by the Board of Directors. Each officer (whether elected at the first meeting of the Board of Directors after the annual meeting of stockholders or to fill a vacancy or otherwise) shall hold his office until the first meeting of stockholders and until his successor shall have been elected, or until his death, or until he shall have resigned in the manner provided in Section 5.4 or shall have been removed in the manner provided in Section 5.5.

Section 5.3 Subordinate Officers and Agents. The Board of Directors from time to time may appoint other officers or agents (including one or more Assistant Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers) to hold office for the period, have the authority and perform those duties as are provided in these By Laws or as may be provided in the resolutions appointing them. The Board of Directors may delegate to any officer or agent the power to appoint any subordinate officers or agents and to prescribe their respective terms of office, authorities and duties.

Section 5.4. Resignations. Any officer may resign at any time by giving written notice of the resignation to the Board of Directors, the President, a Vice President or the Secretary. Unless otherwise specified in the written notice, the resignation shall take effect upon receipt thereof by the Board of Directors or the officer.

Section 5.5. Removal. Any officer specifically designated in Section 5.1 may be removed at any time, either with or without cause, at any meeting of the Board of Directors by the vote of a majority of all the directors then in office. Any officer or agent appointed in accordance with the provisions of Section 5.3 may be removed, either with or without cause, by the Board of Directors at any meeting, by the vote of a majority of the directors present at the meeting, or by any superior officer or agent upon whom the power of removal shall have been conferred by the Board of Directors.

Section 5.6. Vacancies. A vacancy in any office by reason of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term in the manner prescribed by these By Laws for regular election or appointment to the office.

Section 5.7 Chairman of the Board. The Chairman of the Board, if such an officer is elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the By Laws. If there is no President, the Chairman of the Board shall in addition be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 5.8.

Section 5.8. The President. Subject to such powers, if any, as may be given by the By Laws or the Board of Directors to the Chairman of the Board, if there is such an officer, the President shall be the general manager and chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and the officers of the corporation. If present, he shall preside at all meetings of stockholders and he shall see that all orders and resolutions of the Board of Directors are carried into effect. He may sign, with any other officer thereunto duly authorized, certificates of stock of the corporation, the issuance of which shall have been duly authorized (the signature to which may be a facsimile signature), and may sign and execute in the name of the corporation deeds, mortgages, bonds, contracts, agreements or other instruments duly authorized by the Board of Directors except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent. From time to time he shall report to the Board of Directors all matters within his knowledge which the interests of the corporation may require to be brought to its attention. He shall also perform other duties as are given to him by these By Laws or as from time to time may be assigned to him by the Board of Directors.

Section 5.9. The Vice President. At the request of the President or in his absence or disability, the Vice Presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a Vice President designated by the Board of Directors, shall perform all the duties of the President and, when so acting, shall have all the powers of and be subject to all of the restrictions upon the President. Any Vice President may also sign, with any other officer thereunto duly authorized, certificates of stock of the corporation the issuance of which shall have been duly authorized (the signature to which may be a facsimile signature), and may sign and execute in the name of the corporation deeds, mortgages, bonds and other instruments duly authorized by the Board of Directors, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors to

some other officer or agent. Each Vice President shall perform other duties as are given to him by these By Laws or as from time to time may be assigned to him by the Board of Directors or the President.

Section 5.10. The Secretary. The Secretary shall:

(a) Record all the proceedings of the meetings of the stockholders, the Board of Directors, and any committees in a book or books to be kept for that purpose;

(b) Cause all notices to be duly given in accordance with the provisions of these By Laws and as required by statute;

(c) Whenever any committee shall be appointed in pursuance of a resolution of the Board of Directors, furnish the chairman of that committee with a copy of the resolution;

(d) Be custodian of the records and of the seal of the corporation, and cause the seal to be affixed to all certificates representing stock of the corporation before the issuance thereof and to all instruments the execution of which on behalf of the corporation under its seal shall have been duly authorized;

(e) See that the lists, books, reports, statements, certificates and other documents and records required by statute are properly kept and filed;

(f) Have charge of the stock and transfer books of the corporation, which shall show the names of the shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation; and shall exhibit the stock books at reasonable times to persons who are entitled by statute to have access thereto;

(g) Sign (unless the Treasurer or an Assistant Secretary or an Assistant Treasurer shall sign) certificates representing stock of the corporation the issuance of which shall have been duly authorized (the signature of which may be a facsimile signature).

Section 5.11. Assistant Secretaries. At the request of the Secretary or in his absence or disability, the Assistant Secretary designated by him (or in the absence of such designation, the Assistant Secretary designated by the Board of Directors or the President) shall perform all the duties of the Secretary, and, when



so acting, shall have all the powers of and be subject to all restrictions upon the Secretary. The Assistant Secretaries shall perform other duties as from time to time may be assigned to them, respectively, by the Board of Directors, the President or the Secretary.

Section 5.12. The Treasurer. The Treasurer is the Chief Financial Officer of the corporation and shall:

(a) Have charge of and supervision over and be responsible for the funds, securities, receipts and disbursements of the corporation;

(b) Cause the moneys and other valuable effects of the corporation to be deposited in the name and to the credit of the corporation in the banks or trust companies or with the bankers or other depositaries as shall be selected in accordance with Section 6.3 of these By Laws or to be otherwise dealt with in the manner as the Board of Directors may direct;

(c) Cause the funds of the corporation to be disbursed by checks or drafts upon the authorized depositaries of the corporation, and cause to be taken and preserved proper vouchers for all moneys disbursed;

(d) Render to the Board of Directors or the President, whenever requested, a statement of the financial condition of the corporation and of all his transactions as Treasurer;

(e) Cause to be kept at the corporation's principal office correct books of account of all its business and transactions and such duplicate books of account as he shall determine and upon allocation cause such books or duplicates thereof to be exhibited to any director;

(f) Be empowered, from time to time, to require from the officers or agents of the corporation reports or statements giving such information as he may desire with respect to any and all financial transactions of the corporation;

(g) Sign (unless the Secretary or an Assistant Secretary or an Assistant Treasurer shall sign) certificates representing stock of the corporation the issuance of which shall have been duly authorized (the signature to which may be a facsimile signature); and

(h) In general, perform all duties incident to the office of Treasurer and other duties as are given to him by

these By Laws or as from time to time may be assigned to him by the Board of Directors or the President.

Section 5.13. Assistant Treasurers. At the request of the Treasurer or in his absence or disability, the Assistant Treasurer designated by him (or in the absence of such designation, the Assistant Treasurer designated by the Board of Directors or the President) shall perform all the duties of the Treasurer, and, when so acting, shall have all the powers of and be subject to all restrictions upon the Treasurer. The Assistant Treasurers shall perform other duties as from time to time may be assigned to them, respectively, by the Board of Directors, the President or the Treasurer.

Section 5.14. Salaries. The salaries of the officers of the corporation shall be fixed from time to time by the Board of Directors, except that the Board of Directors may delegate to any person the power to fix the salaries or other compensation of any officers or agents appointed in accordance with the provisions of Section 5.3. No officer shall be prevented from receiving his salary by reason of the fact that he is also a director of the corporation.

Section 5.15. Surety Bonds. If the Board of Directors shall require, any officer or agent of the corporation shall execute to the corporation a bond in a sum and with the surety or sureties as the Board of Directors may direct, conditioned upon the faithful discharge of his duties, including responsibility for negligence and for the accounting for all property, funds or securities of the corporation which may come into his hands.

## ARTICLE VI

### Execution of Instruments and Deposit of Corporate Funds

Section 6.1. Execution of Instruments Generally. The President, any Vice President, the Secretary or the Treasurer, subject to the approval of the Board of Directors, may enter into any contract or execute and deliver any instrument in the name and on behalf of the corporation. The Board of Directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the corporation, and the authorization may be general or confined to specific instances.

Section 6.2. Borrowing. No loans or advances shall be obtained by or contracted for, by or on behalf of the corporation and no negotiable paper shall be issued in its name, unless and except as authorized by the Board of Directors. The authorization may be general or confined to specific instances. Any officer or

agent of the corporation thereunto authorized may obtain loans and advances for the corporation and for the loans and advances may make, execute and deliver promissory notes, bonds or other evidences of indebtedness of the corporation. Any officer or agent of the corporation thereunto authorized may pledge, hypothecate or transfer as security for the payment of any and all loans, advances, indebtedness and liabilities of the corporation, any and all stocks, bonds, other securities and other personal property at any time held by the corporation, and to that end may endorse, assign and deliver the same and do every act and thing necessary or proper in connection therewith.

Section 6.3. Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to its credit in the banks or trust companies or with the bankers or other depositaries as the Board of Directors may select, or as may be selected by any officer or officers or agent or agents authorized by the Board of Directors. Endorsements for deposit to the credit of the corporation in any of its duly authorized depositaries shall be made in the manner as the Board of Directors from time to time may determine.

Section 6.4. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, and all notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by the officer or officers or agent or agents of the corporation, and in the manner, as from time to time shall be determined by the Board of Directors.

Section 6.5. Proxies. Proxies to vote with respect to shares of stock of other corporations owned by or standing in the name of the corporation may be executed and delivered from time to time on behalf of the corporation by the President or a Vice President or by any other person or persons thereunto authorized by the Board of Directors.

## ARTICLE VII

### Miscellaneous

Section 7.1. Annual and Other Reports. The annual report to shareholders referred to in Section 1501 of the California General Corporation Law is expressly dispensed with, but nothing herein shall be interpreted as prohibiting the Board of Directors from issuing annual or other periodic reports to the shareholders of the corporation as they consider appropriate.

The corporation shall, upon the written request of any shareholder, mail to the shareholder a copy of the last annual, semi-annual or quarterly income statement which it has prepared and a balance sheet as of the end of the period. The quarterly income

statements and balance sheets referred to in this section shall be accompanied by the report thereon, if any, of any independent accountants engaged by the corporation or the certificate of an authorized officer of the corporation that the financial statements were prepared without audit from the books and records of the corporation. Until such time as this corporation shall have 100, or more, shareholders of record of its shares (as determined as provided in Section 605 of the California Corporations Code) the corporation shall not be required to send to any shareholder any annual, semi-annual or quarterly reports.

Section 7.2. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the California General Corporation Law shall govern the construction of these By Laws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular, and the term "person" includes a corporation as well as a natural person.

Section 7.3. Employee Stock Purchase Plans. The corporation may adopt and carry out one or more employee stock purchase plans to issue and sell or to grant options for the purchase of its shares to employees of the corporation or any subsidiary, or to a trustee on behalf of any of these employees. The shares to be sold, or to which options to purchase will be granted, under the plan may be unissued or issued and held, or they may be subsequently acquired by the corporation. A plan may specify any consideration permitted under California Corporations Code Section 1109 as payment for shares; may provide for payment in installments or at one time; and may allow employees to pay for the shares with services or otherwise. Before becoming effective, any plan must be approved or authorized by the Board of Directors.

The plan may include, among other things, provisions determining, or allowing, the Board of Directors or any committee designated by the Board to determine: (a) eligibility of employees (including officers and directors) to participate therein; (b) the number and class of shares which may be subscribed for or for which options may be granted under the plan; (c) the time and method of payment; (d) the prices at which the shares will be issued or sold; (e) whether title to the shares will be reserved to the corporation until full payment; (f) the effect of a participating employee's death or termination of employment, including whether the corporation will have any option or obligation to repurchase shares issued under the plan (g) restrictions, if any, on transfer of the shares, and the plan; (h) termination, continuation and adjustment of participating employees' rights on the happening of specified contingencies, including increases or decreases in the number of issued shares of the class covered by the plan without receipt of consideration by the corporation or any exchange of shares of the class for stock or securities of another corporation pursuant to a

reorganization or merger, consolidation or dissolution of the corporation; (i) amendment, termination, interpretation and administration of the plan by the Board of Directors; and (j) subject to law, the Articles of Incorporation and these By Laws, any other matters included in the plan that are approved or authorized by the Board or its designated committee.

Section 7.4. Certificates for Shares. Every holder of shares in the corporation shall be entitled to have a certificate signed in the name of the corporation by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or any Assistant Secretary, certifying the number of shares and the class or series of shares owned by the shareholder. Any or all of the signatures on the certificates may be facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be an officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if the person were an officer, transfer agent or registrar at the date of issue.

Any certificate may also contain a legend or other statement as may be required by Section 418 of the California General Corporation Law, the Corporate Securities Law of 1968, the Federal Securities Laws, and any agreement between the corporation and the issuee thereof.

Certificates for shares may be issued before full payment under restrictions and for purposes as the Board of Directors or the By Laws may provide; provided, however, that any certificate issued before full payment shall state on its face the amount remaining unpaid and the terms of payment thereof.

No new certificate for shares shall be issued in lieu of an old certificate unless the latter is surrendered and cancelled at the same time; provided, however, that a new certificate will be issued without the surrender and cancellation of the old certificate if (1) the old certificate is lost, apparently destroyed, or wrongfully taken; (2) the request for the issuance of the new certificate is made within a reasonable time after the owner of the old certificate has notice of its loss, destruction, or theft; (3) the request for the issuance of a new certificate is made prior to the receipt of notice by the corporation that the old certificate has been acquired by a bona fide purchaser; (4) the owner of the old certificate filed a sufficient indemnity bond with or provides other adequate security to the corporation; and (5) the owner satisfies any other reasonable requirements imposed by the corporation. In the event of the issuance of a new certificate, the rights and liabilities of the corporation, and of the holders of the old and new certificates, shall be governed by the provisions of Sections 8104 and 8405 of the California Commercial Code.

Section 7.5. Inspection of By Laws. The corporation shall keep in its principal executive office in California, or if its principal executive office is not in California, then at its principal business office in California (or otherwise provide upon written request of any shareholder) the original or a copy of the By Laws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the shareholders at all reasonable times during office hours.

#### ARTICLE VIII

##### Corporate Seal

Section 8.1. The corporate seal shall be circular in form and shall bear the name of the corporation and words and figures denoting its organization under the laws of the State of California and the year thereof and otherwise shall be in the form as shall be approved from time to time by the Board of Directors.

#### ARTICLE IX

##### Fiscal Year.

Section 9.1. The fiscal year of the corporation shall be designated by resolution of the Board of Directors.

#### ARTICLE X

##### Amendments

Section 10.1. All By Laws of the corporation may be amended, altered or repealed, and new By Laws may be made by, the affirmative vote of the holders of record of a majority of the outstanding shares of stock of the corporation entitled to vote cast at any annual or special meeting, or by written consent, or (subject to Section 212 of the General Corporaton Law, regarding changes in the number of directors) by the affirmative vote of a majority of the directors present at any regular or special meeting at which a quorum is present.

CERTIFICATE OF THE INCORPORATOR

OF

PCA METAL FINISHING, INC.

The undersigned incorporator of PCA METAL FINISHING, INC., a California corporation, hereby certifies pursuant to Section 210 of the General Corporation Law of California:

1. The certificate of incorporation of said corporation was filed with the Secretary of State of California on July 28, 1980.

2. The By Laws annexed hereto have been adopted by me as and for the By Laws of said corporation.

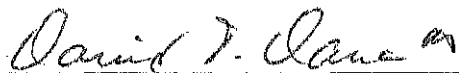
3. Pursuant to Section 3.2 of the By Laws of said corporation, the following named persons have been elected by me as the directors of said corporation to hold office until the first annual meeting of stockholders or until their successors are elected and qualify:

FREDERICK M. MYERS

JAMES C. HART, JR.

RACINE PARRAS

IN WITNESS WHEREOF, I have signed this instrument as of the date when these actions were so taken this 28th day of July, 1980.

  
\_\_\_\_\_  
DAVID T. DANA III,  
Incorporator


CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of PCA METAL FINISHING, INC., a California corporation; and

2. That the foregoing By Laws, comprising twenty-three (23) pages, constitute the By Laws of said corporation as duly adopted by action of the Incorporator of the corporation duly taken on July 28, 1980.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said corporation this 30th day of July, 1980.

  
\_\_\_\_\_  
Racine Parras, Secretary



# Exhibit A-3

ACTION BY DIRECTORS  
OF  
PCA METAL FINISHING, INC.,  
a California corporation  
July 30, 1980

The undersigned, being all the directors of the above corporation, took the following actions, and adopted the following resolutions, on the above date:

1. The following persons were elected to the offices indicated until their respective successors are elected and qualified, or until their earlier resignation or removal:

<u>Title</u>	<u>Name</u>
President and Treasurer (Chief financial officer)	James C. Hart, Jr.
Vice President and Secretary	Racine Parras
Vice President	Robert H. Winters

2. A form of stock certificate was approved for use by the corporation and the Secretary of the corporation was directed to insert a sample copy of it in the Minute Book immediately following these minutes.

3. A form of By Laws was adopted for the regulation of the affairs of this corporation and the Secretary was directed to execute a Certificate of Adoption of said By Laws, to insert the By Laws as so certified in the Minute Book of the corporation and to see that a copy of said By Laws similarly certified is kept in the principal executive office or business office in accordance with Section 213 of the California General Corporation Law.

WINEPA001210

4. A form of corporate seal was adopted pursuant to the following resolution:

RESOLVED, that a corporate seal is adopted as the seal of this corporation in the form of two concentric circles, with the name of the corporation between the two circles and the date and state of incorporation within the inner circle.

5. The officers of this corporation were authorized to pay the expenses of the incorporation and organization of the corporation.

6. The location of the principal executive office of the corporation was fixed as 225 Oregon Avenue, El Segundo, California.

7. The following resolutions were adopted relating to a depository of the funds of the corporation and authorizing officers to deal with the corporation's funds:

RESOLVED, that the President and the Secretary of this corporation, acting together, are hereby authorized:

(a) To designate one or more banks, trust companies, or other similar institutions as depositories of the funds, including without limitation, cash and cash equivalents, of this corporation;

(b) To open, keep and close general and special bank accounts, including general deposit accounts, payroll accounts, working fund accounts, and safe deposit boxes, with any such depository;

(c) To cause to be deposited in such accounts with any such depository, from time to time, such funds, including, without limitation, cash and cash equivalents, of this corporation as such officers deem necessary or advisable, and to designate or change the designation of the officer or officers and agent or agents of this corporation who will be authorized to make such deposits and to endorse checks, drafts, or other instruments for such deposit;

(d) From time to time to designate or change the designation of the officer or officers and agent or agents of this corporation who will be authorized to sign or countersign checks, drafts, or other orders for the payment of money issued in the name of this corporation against any funds deposited in any of such accounts, and to revoke any such designation;

(e) To authorize the use of facsimile signatures for the signing or countersigning of checks, drafts, or other orders for the payment of money, and to enter into such agreements as banks and trust companies customarily require as a condition for permitting the use of facsimile signatures;

(f) To make such general and special rules and regulations with respect to such accounts as they may deem necessary or advisable; and

(g) To complete, execute, and/or certify any customary printed blank signature card forms in order conveniently to exercise the authority granted by this resolution and any resolutions printed thereon shall be deemed adopted as a part hereof.

RESOLVED FURTHER, that all form resolutions required by any such depository as presented to this meeting, are hereby adopted in such form utilized by the depository, and the Secretary of this corporation is hereby authorized to certify such resolutions as having been adopted at this meeting and is directed to insert the form of such resolutions in the Minute Book immediately following the minutes of this meeting.

RESOLVED FURTHER, that any such depository to which a copy certified by the Secretary or an Assistant Secretary of this corporation of these resolutions shall have been delivered shall be entitled to rely thereon for all purposes until it shall have received written notice of the revocation or amendment of these resolutions by the Board of Directors of this corporation.

8. The following recitals and resolutions were adopted relating to the issuance of the Capital Stock of the corporation:

WHEREAS, it is deemed to be in the best interest of this corporation to issue one thousand (1,000) of its shares of Common Stock as follows:

PACIFIC CLARK-AIKEN CORP.

1,000 shares

NOW, THEREFORE, BE IT RESOLVED, that 1,000 shares of the authorized common stock of the corporation be issued to Pacific Clark-Aiken Corp.

RESOLVED FURTHER, that all such shares of stock shall be evidenced by certificate or certificates which shall have placed permanently thereon a legend in accordance with the provisions of Section 25102(h) of the California Corporate Securities Law of 1968;

RESOLVED FURTHER, that each of the officers of this corporation is authorized and directed to prepare and file, or cause to be prepared and filed, an appropriate Notice of Issuance of Securities, not later than ten business days after receipt of consideration for the shares of stock, pursuant to Section 25102(h) of the California Corporate Securities Law of 1968;

RESOLVED FURTHER, that the appropriate officers of the corporation are authorized and directed to execute and deliver, in the name and on behalf of the corporation and under its seal, a certificate or certificates of stock for the number of shares of common stock of this corporation to any or all of the persons, in the amounts and for consideration set forth above, in accordance with the terms and conditions of these resolutions;

RESOLVED FURTHER, that the shares of common stock issued and sold by the corporation pursuant to the foregoing Resolutions, when the purchase price therefor shall have been received by this corporation shall be duly and validly issued, fully paid, and nonassessable shares and that the consideration received therefor shall be credited to appropriate capital accounts of this corporation;

RESOLVED FURTHER, that each of the officers of this corporation is authorized, directed and empowered on behalf of this corporation and in its name to execute any applications, certificates, agreements, or any other instruments or documents or amendments or supplements thereto, or to do and to cause to be done any and all other acts and things as such officers may in their discretion deem necessary or appropriate to carry out the purposes of the foregoing resolutions.

9. The following resolutions were adopted with respect to the adopting of a plan under Internal Revenue Code Section 1244 to qualify the corporation's common stock as Section 1244 stock, to enable each shareholder to obtain ordinary loss treatment if the stock becomes worthless:

RESOLVED, that the corporation adopt the following plan intended to qualify under the Internal Revenue Code Section 1244, effective as of the date of this meeting;

(a) The maximum number of common shares to be issued under this plan shall not exceed one thousand shares, and the aggregate consideration which shall consist only of cash or property, to be received for these shares shall not exceed \$1,000;

(b) This plan shall expire no later than two years from the date of this action, and all stock to be issued under it shall be issued within this period, provided that the Board of Directors may in its discretion terminate the plan at an earlier date;

(c) The shares to be issued to the proposed shareholder named in the above resolutions adopted by this action are part of the shares to be issued under this plan; and

(d) No stock other than that sold and issued under this plan shall be offered or sold during the period of this plan.

RESOLVED FURTHER, that the officers of the corporation are authorized and directed to do or cause to be done all acts required or appropriate to carry out the above resolution.

10. A fiscal year of the corporation was established to end on December 31st of each year.

11. James C. Hart, Jr., named as the initial agent for service of process in the Articles of Incorporation of the corporation, was confirmed as the corporation's agent for the purpose of service of process.

The following recitals and resolutions were adopted with respect to the corporation's purchase of the assets of City of Chrome, Inc.:

WHEREAS, this corporation has been presented with the opportunity to purchase the assets of City of Chrome, Inc. from First Agricultural Bank and to execute a lease with Baker Development Company for premises appropriate for conducting a metal plating business; and


WHEREAS, this Board of Directors deems it to be desirable and in the best interests of this corporation to buy the assets of City of Chrome, Inc. and lease the premises offered by Baker Development Company;

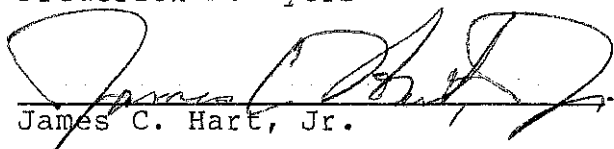
NOW, THEREFORE, BE IT RESOLVED, that the President of this corporation is authorized and directed to purchase the assets of City of Chrome, Inc. from First Agricultural Bank for the sum of \$                    , to execute on behalf of the corporation a promissory note to the bank for the amount of the purchase, and to grant to the bank a security interest in the purchased assets to secure the promissory note;


RESOLVED FURTHER, that the President of this corporation is authorized and directed to enter into a lease with Baker Development Company for the premises at 1723 E. Kimberly, Fullerton, California;

RESOLVED FURTHER, that the President is authorized and empowered to take all such further action and to take all such further action and to execute and deliver all such further documents as the President shall in his discretion determine to be reasonable and necessary, such determination to be conclusively evidenced by his action on the matter.

SIGNED, as of the above date.

  
\_\_\_\_\_  
Frederick M. Myers

  
\_\_\_\_\_  
James C. Hart, Jr.

  
\_\_\_\_\_  
Racine Parras



ACTION BY DIRECTORS

OF

PCA METAL FINISHING, INC.,

a California corporation

June 30, 1982

The undersigned, being all the directors of the above corporation, took the following actions, and adopted the following resolutions, on the above date:

1. The following person was removed from the office indicated.

Title

Name

Vice President

Robert H. Winters

2. The existing officers of the corporation are as follows:

Title

Name

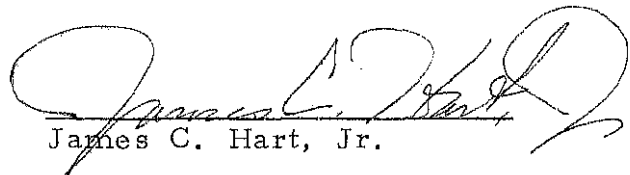
President and Treasurer  
(Chief financial officer)

James C. Hart, Jr.

Vice President  
and Secretary

Racine Parras

SIGNED, as of the above date.

A handwritten signature in dark ink, appearing to read "James C. Hart, Jr.", is written over a horizontal line.

James C. Hart, Jr.

Racine Parras

# Exhibit A-4



# State of California

Bill Jones  
Secretary of State

P.O. Box 944230  
Sacramento, CA 95834-2300  
Phone (916) 657-3537

97-222400

## STATEMENT BY DOMESTIC STOCK CORPORATION

THIS STATEMENT MUST BE FILED WITH CALIFORNIA SECRETARY OF STATE (SEC. 1502, CORPORATIONS CODE)

### A \$10 FILING FEE MUST ACCOMPANY THIS STATEMENT.

Please make check payable to: Secretary of State

WHEN COMPLETING FORM, PLEASE USE BLACK TYPEWRITER RIBBON OR PRINT IN BLACK INK

### IMPORTANT — Please Read Instructions On Back of Form

DO NOT ALTER PREPRINTED NAME. IF ITEM 1 IS BLANK, PLEASE ENTER CORPORATE NAME AND NUMBER

C0993744 DUE DATE 07-31-97 221585  
PCA METAL FINISHING, INC.  
1818 E ROSSLYNN AVE  
FULLERTON, CA 92831

FILED  
SACRAMENTO, CALIF

MAY 9 '97

Bill Jones  
SECRETARY OF STATE

- If There Has Been No Change in Any Of The Information On File, Complete Item 1a Only  
Please indicate on return envelope if no change statement is enclosed.

DO NOT MARK IN THIS SPACE

### THE CALIFORNIA CORPORATION NAMED HEREIN, MAKES THE FOLLOWING STATEMENT

1A. I DECLARE THERE HAS BEEN NO CHANGE IN THE INFORMATION CONTAINED IN THE LAST STATEMENT OF THE CORPORATION WHICH IS ON FILE IN THE SECRETARY OF STATE'S OFFICE DOES NOT APPLY ON INITIAL FILING.



CHECK HERE

TYPE OR PRINT NAME OF SIGNING OFFICER OR AGENT

SIGNATURE

TITLE

DATE

2. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	3A. CITY AND STATE	3B. ZIP CODE
1818 E. ROSSLYNN AVE.	FULLERTON CA	92831
1818 E. ROSSLYNN AVE.	FULLERTON CA	92831
1818 E. ROSSLYNN AVE.	FULLERTON CA	92831

THE NAMES OF THE FOLLOWING OFFICERS ARE: (Must have those three officers (Sec. 312, Corporations Code). An officer may hold more than one office. Do Not Alter Or Obsolete Preprinted Titles. However, You May Add A Title Appropriate For Your Corporation.

5. CHIEF EXECUTIVE OFFICER	5A. STREET ADDRESS (DO NOT USE P.O. BOX)	5B. CITY AND STATE	5C. ZIP CODE
ROBERT H. WINTERS	1818 E. ROSSLYNN AVE.	FULLERTON, CA	92831
PETER GILBERT	45-20 ASTORIA BLVD	LONG ISLAND CITY, N.Y.	11103
PETER GILBERT	45-20 ASTORIA BLVD.	LONG ISLAND CITY, N.Y.	11103

DIRECTORS, INCLUDING DIRECTORS WHO ARE ALSO OFFICERS (Attach supplementary list if necessary)  
Must have one or more directors (Chap. 3, Sec. 301a, Corporations Code). Statements not listing directors will be rejected.

9. NAME	9A. STREET ADDRESS (DO NOT USE P.O. BOX)	9B. CITY AND STATE	9C. ZIP CODE
ROBERT H. WINTERS	1818 E. ROSSLYNN AVE.	FULLERTON, CA	92831
PETER GILBERT	45-20 ASTORIA BLVD	LONG ISLAND CITY, N.Y.	11103
ANTHONY REZZUTI	1818 E. ROSSLYNN AVE.	FULLERTON, CA	92831

11. THE NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

DESIGNATED AGENT FOR SERVICE OF PROCESS Agent for service of process must be a person who is a resident of California, or the agent may be another corporation which has filed a certificate pursuant to Section 1505, California Corporations Code.

12. NAME  
ROBERT H. WINTERS

13. CALIFORNIA STREET ADDRESS IF AGENT IS AN INDIVIDUAL (do not use PO box) Do not include address if agent is a corporation that has filed a certificate pursuant to Section 1505 Corporations Code  
1818 E. ROSSLYNN AVE. FULLERTON, CA 92831

### DESCRIBE TYPE OF BUSINESS OF THE CORPORATION NAMED IN ITEM 1.

14. TYPE OF BUSINESS  
CHROME PLATING ALUMINUM WHEELS

15. I DECLARE THAT I HAVE EXAMINED THIS STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT AND COMPLETE

ROBERT H. WINTERS / [Signature] PRESIDENT

TYPE OR PRINT NAME OF SIGNING OFFICER OR AGENT

ORIGINAL SIGNATURE

TITLE

DATE

# Exhibit A-5



State of California  
Bill Jones  
Secretary of State

STATEMENT BY DOMESTIC STOCK CORPORATION

01-146403

FILED  
SACRAMENTO, CALIF

MAY 4 '01

Bill Jones  
SECRETARY OF STATE

1. DO NOT ALTER PREPRINTED NAME. IF ITEM 1 IS BLANK, PLEASE ENTER CORPORATE NAME AND NUMBER.

C0993744 DUE DATE 07-31-01 260395  
PCA METAL FINISHING, INC.  
1818 E ROSSLYNN AVENUE  
FULLERTON, CA 92631

This Space For Filing Use Only



2. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE CITY AND STATE ZIP CODE

3. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY CITY ZIP CODE

4. MAILING ADDRESS CITY AND STATE CA ZIP CODE

5. CHIEF EXECUTIVE OFFICER/ ADDRESS CITY AND STATE ZIP CODE

6. SECRETARY/ ADDRESS CITY AND STATE ZIP CODE

7. CHIEF FINANCIAL OFFICER/ ADDRESS CITY AND STATE ZIP CODE

8. NAME ADDRESS CITY AND STATE ZIP CODE

9. NAME ADDRESS CITY AND STATE ZIP CODE

10. NAME ADDRESS CITY AND STATE ZIP CODE

11. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY

12. CHECK THE APPROPRIATE PROVISION BELOW AND NAME THE AGENT FOR SERVICE OF PROCESS.

☐ AN INDIVIDUAL RESIDING IN CALIFORNIA.  
☐ A CORPORATION WHICH HAS FILED A CERTIFICATE PURSUANT TO SECTION 1505 OF THE CALIFORNIA CORPORATIONS CODE.  
AGENT'S NAME

13. ADDRESS OF THE AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL. CITY CA ZIP CODE

14. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION

15. I DECLARE THAT I HAVE EXAMINED THIS STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT AND COMPLETE

ROBERT H. WINTERS  
TYPE OR PRINT NAME OF SIGNING OFFICER OR AGENT

ORIGINAL SIGNATURE

PRESIDENT  
TITLE

5/1/01  
DATE

SD-200 NCO (REV. 11/99)

Approved by Secretary of State

WINEPA001221

# Exhibit A-6

0993744  
CERTIFICATE OF DISSOLUTION  
OF  
PCA METAL FINISHING, INC.

00655452

FILED PG  
In the Office of the Secretary of State  
of the State of California

AUG 13 2001

*Bill Jones*  
BILL JONES, Secretary of State

Robert H. Winters, Sr., hereby certifies that:

1. He is the sole director now in office of PCA METAL FINISHING, INC., a California corporation.
2. The corporation has been completely wound up.
3. The corporation's known debts and liabilities have been adequately provided for by their assumption by Pacific Coast Alloy, LLC, whose address is 1818 E. Rosslynn Avenue, Fullerton, CA 92831.
4. The corporation's known assets have been distributed to the persons entitled thereto.
5. A person or corporation assumes the tax liability, if any, of the dissolving corporation as security for the issuance of a tax clearance certificate from the Franchise Tax Board and is responsible for additional corporate taxes, if any, that are assessed and that become due after the date of the assumption of the tax liability.
6. The election to dissolve was made by the vote of all the outstanding shares.
7. The corporation is dissolved.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Date: Aug 8, 2001

*Robert H. Winters, Sr.*  
Robert Winters, Sr., Director

WINEPA001223

# Exhibit A-7



**State of California**  
**Secretary of State**

**CERTIFICATE OF STATUS**

**ENTITY NAME:**

PCA METAL FINISHING, INC.

**FILE NUMBER:** C0993744  
**FORMATION DATE:** 07/28/1980  
**TYPE:** DOMESTIC CORPORATION  
**JURISDICTION:** CALIFORNIA  
**STATUS:** DISSOLVED

I, ALEX PADILLA, Secretary of State of the State of California,  
hereby certify:

The records of this office indicate the entity filed a Certificate  
of Dissolution on August 13, 2001, and the entity's powers, rights  
and privileges have ceased.



IN WITNESS WHEREOF, I execute this certificate  
and affix the Great Seal of the State of  
California this day of December 03, 2015.

A handwritten signature in black ink, appearing to read "Alex Padilla".

ALEX PADILLA  
Secretary of State

# Exhibit B

STOCK PURCHASE AGREEMENT  
DATED AS OF APRIL 30, 1997  
BETWEEN  
PCA AEROSPACE, INC.  
AND  
AFX WHEELS, INC.

## STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (this "Agreement") is entered into as of the 30th day of April, 1997, by and among PCA Aerospace, Inc., a California corporation ("Seller"), AFX Wheels, Inc., a California corporation ("Buyer"), and, following the Closing (as herein defined), by ratification and adoption of the terms, provisions and obligations hereof, PCA Metal Finishing, Inc., a California corporation (the "Company"), with reference to the following facts and circumstances:

WHEREAS, Seller owns all of the issued and outstanding shares of capital stock (the "Stock") of the Company; and

WHEREAS, Buyer desires to purchase the Stock from Seller, and Seller desires to sell the Stock to Buyer, all upon the terms, provisions and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual and dependent agreements and covenants herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### 1. DEFINITIONS.

1.1 Certain Defined Terms. As used in this Agreement and, unless another definition is specifically provided therein, in the other Transaction Documents (as herein defined), in which event such other definition shall govern with respect to such other Transaction Document, the following terms shall have the following meanings:

"Affiliate" means, with respect to any Person, any Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. Without limiting the foregoing, a Person shall be deemed to be "controlled by" another Person if such other Person (i) possesses, directly or indirectly, power to vote ten percent (10%) or more of the securities having ordinary voting power for the election of directors of such Person or (ii) owns ten percent (10%) or more of the equity interests of such Person.

"Agreement", "hereof" and "hereunder" and words of similar import refer to this Stock Purchase Agreement, as it may be amended, supplemented or otherwise modified from time to time.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Board of Directors" means the Board of Directors of Buyer, the Company or one of their respective Affiliates or Subsidiaries, as the context requires, or any committee thereof duly authorized to act on behalf of such Board.

"Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of California is a day on which banking institutions located in either such state are authorized or required by law or other governmental action to close.

"Buyer" has the meaning set forth in the Introduction to this Agreement.

"Capital Stock" of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including, with limitation, any preferred stock or any interests in a joint venture, general or limited partnership, or limited liability company.

"Change of Control" means an event or series of events by which (i) Buyer or the Company, as the case may be, sells, conveys, transfers or leases, directly or indirectly, all or substantially all of its properties and assets to any Person or group (as such term is used in Section 13(d) and 14(d) of the Exchange Act); (ii) any Person or group is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person or group shall be deemed to have "beneficial ownership" of all shares that any such Person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly of securities representing forty-five percent (45%) or more of the combined voting power of any class of Capital Stock of Buyer or the Company then outstanding entitled to vote in the election of directors ("Voting Stock"); or (iii) Buyer or the Company consolidates with or merges into another Person or conveys, transfers or leases all or substantially all its properties and assets to any Person or any Person consolidates with or merges into Buyer or the Company, in either event pursuant to a transaction in which the outstanding Voting Stock of Buyer or the Company, as the case may be, is changed into or exchanged for cash, securities or other property with the effect that any Person or group becomes the "beneficial owner," directly or indirectly, of securities representing forty-five percent (45%) or more of the combined voting power of the Voting Stock of the Person that continues after such consolidation or merger or who acquires such assets.

"Collateral" means all the real, personal and mixed property made subject to a Lien pursuant to the Pledge Agreement, the Security Agreement, the Security Agreements (Third Party) or any other Transaction Documents.

"Closing" has the meaning set forth in Section 3 hereof.

"Closing Date" has the meaning set forth in Section 3 hereof.

"Company" has the meaning set forth in the Introduction to this Agreement.

"Contingent Obligation", as applied to any Person, means any direct or indirect liability, contingent or otherwise, of that Person (i) with respect to any Indebtedness, lease, dividend or other obligation of another if the primary purpose or intent thereof by the Person incurring the Contingent Obligation is to provide assurance to the obligee of such obligation of another that such obligation of another will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such obligation will be protected (in whole or in part) against loss in respect thereof, (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings, or (iii) under interest rate agreements and currency agreements. Contingent Obligations shall include, without limitation, (a) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (b) the obligation to make take-or-pay or similar payments if required regardless of non-performance by any other party or parties to an agreement, and (c) any liability of such Person for the obligation of another through any agreement (contingent or otherwise) (X) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (Y) to maintain the solvency or any balance sheet item, level of income or financial condition of another it in the case of any agreement described under subclauses (X) or (Y) of this sentence, the primary purpose or intent thereof is as described in the preceding sentence. For purposes of this definition, the amount of any Contingent Obligation at any time of determination shall be computed as the amount that, in light of all the facts and circumstances existing at such time represents the amount that reasonably can be expected at such time of determination to become an actual or matured liability.

**"Environmental Claim"** means any accusation, allegation, notice of violation claim, demand, abatement order, cleanup order, removal order, or other order or direction (conditional or otherwise) by any governmental authority or any Person for any injury, loss or damage, including, without limitation, personal injury (including sickness, disease or death), tangible or intangible property damage, contribution, indemnity, indirect or consequential damages, damage to the environment, nuisance, pollution, contamination or other adverse effects on the environment, or for fines, penalties or restrictions or to compel cleanup or remediation, in each case relating to, resulting from or in connection with any Hazardous Material and relating to Buyer, the Company, any of their Subsidiaries, or any Facility.

**"Event of Default"** has the meaning set forth in Section 9 hereof.

**"Exchange Act"** means the Securities Exchange Act of 1934, as it may from time to time be amended, and the related regulations and published interpretations.

**"Facility" and "Facilities"** mean any and all real property (including, without limitation, all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Buyer, the Company, or either of their respective Subsidiaries.

**"GAAP"** means, subject to the limitations on the application thereof set forth in subsection 1.2, generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

**"Governmental Authority"** means any agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever of any governmental or quasi-governmental unit, whether federal, state, county, district, city or other political subdivision or otherwise and whether now or hereafter in existence, or any officer or official thereof.

**"Guarantee"** means the Secured Continuing Guarantee of even date herewith of the Company, South Bay, and Wheel Effects substantially in the form of Exhibit "B" attached hereto and incorporated herein by this reference, as such Guarantee may be amended, supplemented or otherwise modified from time to time.

**"Indebtedness"**, as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money, (ii) that portion of obligations with respect to capital leases that is properly classified as a liability on a balance sheet in conformity with GAAP, (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money, (iv) any obligation owed for all or any part of the deferred purchase price of property or services, which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument, (excluding, as an example, any trade payables payable in the ordinary course of business that are not so due or so evidenced), (v) all indebtedness secured by any lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person and (vi) any Contingent Obligation.

**"Lien"** means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, any agreement to give any security interest and any mechanic's liens) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

**"Material Adverse Effect"** means (i) a material adverse effect upon the business, operations, properties, assets, condition (financial or otherwise) or prospects of Buyer, the Company and their Subsidiaries (taken as a whole), or of the Company, or (ii) the impairment of the ability of Buyer or the Company to perform, or of Seller to enforce, any of the Obligations.

**"Obligations"** means all obligations of every nature of Buyer or the Company from time to time owed to Seller this Agreement, the Note or any other Transaction Document, whether for principal, interest, fees, expenses, indemnification or otherwise.

**"Officers' Certificate"** means, as applied to any corporation, a certificate executed on behalf of such corporation by (i) its chairman of the board (if an officer) or its president, or (ii) one of its vice presidents and by its chief financial officer or treasurer.

**"Person"** means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks and other organizations,



whether or not legal entities, and governments and agencies and political subdivisions thereof.

"Pledge Agreement" means the Pledge Agreement of even date herewith executed and delivered by Buyer pledging all of the issued and outstanding shares of Capital Stock of the Company in favor of Seller, substantially in the form of Exhibit "C" attached hereto and incorporated herein by this reference, as it may hereafter be amended, supplemented or otherwise modified.

"Potential Event of Default" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"Restricted Junior Payment" means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of capital stock of Buyer, the Company or any of their Subsidiaries now or hereafter outstanding, except (y) a dividend payable solely in shares of that class of capital stock to the holders of that class or in options, warrants or other rights to purchase such capital stock, and (z) a cash dividend intended and actually paid to Seller as a payment on the Note or in respect of any other Obligation (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of capital stock of Buyer or the Company now or hereafter outstanding (other than in exchange for capital stock of Buyer or the Company or options, warrants or other rights to purchase such capital stock), (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of capital stock of Buyer or the Company now or hereafter outstanding, and (iv) any payment or prepayment of principal of, or premium, if any, on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any indebtedness of Buyer, the Company or any of their Subsidiaries.

"Securities Act" means the Securities Act of 1933, as it may from time to time be amended, and the related regulations and published interpretations.

"Security Agreement" means the Security Agreement of even date herewith executed and delivered by Buyer in favor of Seller, substantially in the form of Exhibit "D" attached hereto and incorporated herein by this reference, as it may hereafter be amended, supplemented or otherwise modified.

"Security Agreement (Third Party)" means any of those Security Agreements (Third Party) of even date herewith executed and delivered by the Company, South Bay and Wheel Effects in favor of Seller, substantially in the form of Exhibit

"E" attached hereto and incorporated herein by this reference, as they may hereafter be amended, supplemented or otherwise modified.

"Seller" has the meaning set forth in the Introduction to this Agreement.

"South Bay" means South Bay Plating Company, a California corporation and a direct, wholly-owned Subsidiary of the Company.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than fifty percent (50%) of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

"Transaction Documents" means this Agreement, the Note, the Pledge Agreement, the Security Agreement, the Guarantees, the Security Agreements (Third Party), and all other instruments or documents now or hereafter granting Liens on the property of Buyer, the Company or any of their Subsidiaries to Seller, and any other instruments or documents now or hereafter entered into in connection herewith or therewith.

"Wheel Effects" means Wheel Effects, Inc., a California corporation and a direct, wholly-owned Subsidiary of the Company.

1.2 Accounting Terms. Except as otherwise expressly provided in this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP.

1.3 Other Definitional Provisions. References to "Sections" and "subsections" shall be to Sections and subsections, respectively, of this Agreement unless otherwise specifically provided. Any of the terms defined in subsection 1.1 may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

## 2. PURCHASE AND SALE.

2.1 Purchase and Sale. Upon the terms, provisions and conditions of this Agreement, Seller agrees to sell, transfer and

convey the Stock to Buyer, and Buyer agrees to purchase and acquire the Stock from Seller. At the Closing (as hereinafter defined) Seller shall deliver to Buyer all stock certificates representing shares of the Stock, duly endorsed, or accompanied by stock powers duly endorsed, to Buyer, and Buyer shall pay the consideration for the Stock as provided in Section 2.2 hereof.

**2.2 Purchase Price.** The total purchase price for the Stock shall be Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000) (the "Purchase Price"), payable as follows:

(a) Prior to the date hereof, Buyer has paid or caused to be paid to Seller the sum of One Hundred Thousand Dollars (\$100,000), which sum Seller shall apply in payment of the Purchase Price at the Closing;

(b) At the Closing, Buyer will pay or cause to be paid to Seller an additional sum of One Hundred Thousand Dollars (\$100,000) (the "Closing Cash Payment"), which sum Seller shall apply in payment of the Purchase Price; and

(c) At the Closing, Buyer shall deliver to Seller Buyer's Secured Promissory Note substantially in the form of Exhibit "A" attached hereto and incorporated herein by this reference (the "Note"). Full and timely payment and performance of the Note shall be secured and/or guaranteed, as applicable, by (i) the Pledge Agreement, (ii) the Guarantee, (iii) the Security Agreement, and (iv) the Security Agreements (Third Party).

**3. CLOSING.** The closing of the purchase and sale of the Stock and the other transactions contemplated hereby (the "Closing") shall take place at the offices of Messrs. Kalisch, Cotugno & Rust, 9606 Santa Monica Boulevard, Penthouse, Beverly Hills, California on the date hereof (the "Closing Date").

**4. REPRESENTATIONS AND WARRANTIES OF SELLER.**

**4.1 As-Is, Where-Is.** Buyer and Seller hereby agree and acknowledge that Messrs. Peter Gilbert and Robert H. Winters ("RHW"), the principals of Buyer, are and have been members of the respective Boards of Directors of both Seller and Buyer and, as such, are knowledgeable concerning the Company and any subsidiaries, including all aspects of its and their respective assets, liabilities, business, properties, procedures, operations, financial condition and prospects. Without limiting the generality of the foregoing, Buyer and Seller further agree and acknowledge that RHW is the President of the Company and at all times since 1979, has had full and unrestricted access to all information regarding the Company and its business (including the businesses of any subsidiaries). ACCORDINGLY, AND AS A MATERIAL INDUCEMENT TO SELLER TO ENTER INTO THIS AGREEMENT AND TO

CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREBY, IN THE ABSENCE OF WHICH SELLER WOULD NOT UNDERTAKE SUCH ACTIONS, SELLER WILL SELL THE STOCK TO BUYER, AND BUYER WILL ACQUIRE THE STOCK, THE COMPANY, ITS ASSETS AND ITS BUSINESS (INCLUDING THEREIN THE ASSETS AND BUSINESSES OF ANY SUBSIDIARIES), ON AN "AS-IS, WHERE-IS" BASIS, WITH ALL DEFECTS AND LIABILITIES, PATENT AND LATENT, AND WITHOUT ANY REPRESENTATION OR WARRANTY BY SELLER OF ANY KIND OR NATURE WHATSOEVER, EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 4.2 BELOW.

Seller Initial: rep.

Buyer Initial: [Signature]

**4.2 Seller's Representations.** Seller hereby represents and warrants to Buyer as follows:

(a) Organization. Each of Seller and the Company is a corporation duly organized, validly existing and in good standing under the laws of the State of California, in each case with full corporate power and authority to carry on its business as the same is now being conducted.

(b) Capitalization. Capitalization; Stock Ownership. The authorized Capital Stock of the Company consists of One Thousand (1,000) shares of Common Stock, par value \$1.00 per share (the "Shares"), all of which are issued and outstanding and owned, beneficially and of record, by Seller. All of the Shares are validly issued, fully paid and non-assessable. There are no outstanding options, warrants, scrip, preemptive rights or other rights (whether vested or not) to subscribe to, calls or other rights, agreements or commitments of any kind relating to, or securities or rights convertible into, any shares of the capital stock of the Company, and no agreements by the Company or Seller to grant any such rights.

(c) Authorization and Enforceability of Agreement. The execution, delivery and performance of this Agreement and each other Transaction Document to which Seller is a party have been or at the Closing will be duly authorized by all necessary corporate action on the part of Seller, and upon execution and delivery this Agreement and each of the other Transaction Documents will constitute the valid and binding obligation of Seller, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, debt moratorium or similar laws affecting creditors' rights generally.

(d) No Violation. Neither the execution, delivery or performance of this Agreement or any other Transaction Document, nor the consummation of any of the transactions contemplated hereby or thereby will (a) violate or conflict with the Articles of Incorporation, Bylaws or comparable charter documents of Seller, or any law, rule, regulation, judgment,

order or decree of any court or other governmental body, or (b) conflict with or result in any material breach of or default under, permit any party to accelerate any rights under or terminate, or result in the creation of any lien, charge or encumbrance pursuant to any provision of any material contract, indenture, mortgage, lease, franchise, license, permit, authorization, instrument or agreement of any kind to which Seller is a party or by which Seller is bound or to which its properties are subject.

(e) Approvals. The execution, delivery and performance of this Agreement by Seller have been authorized and approved by all necessary regulatory authorities having jurisdiction thereover, except for required approvals, if any, by regulatory authorities related to transfer of any operating permits of the Company, which approvals, to the extent required, will be obtained by, and will be the sole responsibility of, Buyer.

(f) Full Disclosure. Neither this Agreement, nor any document contemplated hereby or furnished by or on behalf of Seller to Buyer in connection with the execution and delivery of this Agreement and/or the consummation of the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. There is no fact known to Seller which Seller has not disclosed to Buyer which materially adversely affects, or insofar as Seller can reasonably foresee will materially adversely affect, the properties, business, prospects, operations, earnings, assets, liabilities or condition (financial or otherwise) of the Company taken as a whole.

(g) Bulk Sale Compliance. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, requires any filing or publication under Division 6 of the California Commercial Code ("Bulk Transfers").

5. REPRESENTATIONS AND WARRANTIES BY BUYER. Buyer represents and warrants to Seller that, as of the date of this Agreement and as of the Closing:

5.1 Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and has all requisite corporate power and authority to carry on its business as now being conducted by it, to execute and deliver this Agreement, and to carry out the transactions on its part contemplated hereby.

**5.2. Authorization and Enforceability of Agreement.**

The execution, delivery and performance of this Agreement and each other Transaction Document to which Buyer or any Affiliate (as such term is defined in Rule 405 promulgated under the Securities Act) is a party have been or at the Closing will be duly authorized by all necessary corporate action on the part of Buyer and/or such Affiliate, and upon execution and delivery this Agreement and each of the other Transaction Documents will constitute the valid and binding obligation of Buyer and/or such Affiliate(s), as applicable, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, debt moratorium or similar laws affecting creditors' rights generally.

**5.3 No Violation.**

Neither the execution, delivery or performance of this Agreement or any other Transaction Document, nor the consummation of any of the transactions contemplated hereby or thereby will (a) violate or conflict with the Articles of Incorporation, Bylaws or comparable charter documents of Buyer or any Affiliate, or any law, rule, regulation, judgment, order or decree of any court or other governmental body, or (b) conflict with or result in any material breach of or default under, permit any party to accelerate any rights under or terminate, or result in the creation of any lien, charge or encumbrance pursuant to any provision of any material contract, indenture, mortgage, lease, franchise, license, permit, authorization, instrument or agreement of any kind to which Buyer or any Affiliate is a party or by which Buyer or any Affiliate is bound or to which its or their respective properties are subject.

**5.4 Approvals.**

The execution, delivery and performance of this Agreement and each of the other Transaction Documents by Buyer and/or its Affiliates, as appropriate, have been authorized and approved by all necessary regulatory authorities having jurisdiction thereover, except for required approvals, if any, by regulatory authorities related to transfer of any operating permits of the Company or any other Affiliate, which approvals, to the extent required, will be obtained by, and will be the sole responsibility of, Buyer.

**5.5 Full Disclosure.**

Neither this Agreement, nor any document contemplated hereby or furnished by or on behalf of Buyer or any Affiliate of Buyer to Seller in connection with this execution and delivery of this Agreement, the other Transaction Documents and/or the consummation of the transactions contemplated hereby and thereby contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. There is no fact known to Buyer which Buyer has not disclosed to Seller which materially adversely affects, or insofar as Buyer can reasonably foresee will materially adversely affect, the

properties, business, prospects, operations, earnings, assets, liabilities or condition (financial or otherwise) of the Company taken as a whole.

5.6 No Registration. Buyer acknowledges that the Stock has not being registered under the Act or under any state or other federal securities statute. The Stock is being acquired by Buyer for its own account, for investment purposes only, and not with a view to any distribution thereof. Buyer agrees that no transfer or other disposition of the Stock or any interest therein will be made in violation of the Securities Act or any state or other federal securities statute.

6. COVENANTS.

6.1. Public Announcement. Except for necessary communication with employees, customers and suppliers of the Company, neither Buyer nor Seller shall make any public announcement regarding this Agreement or the transactions contemplated hereby unless Buyer and Seller agree upon the form, content and timing of any such announcement.

6.2. Certain Affirmative Covenants of Buyer. Buyer hereby covenants and agrees that, until payment in full of the Obligations, each of Buyer and the Company shall perform, and shall cause each of their Subsidiaries to perform, all covenants in this Section 6.2.

(a) Financial Statements and Related Information. Buyer and the Company will maintain, and cause each of their respective Subsidiaries to maintain, a system of accounting established in accordance with sound business practices to permit preparation of financial statements in conformity with GAAP. Buyer and the Company will deliver to Seller:

(i) Quarterly Financials: as soon as available and in any event within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year, the consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter and the related consolidated statements of income and stockholders' equity of the Company and its Subsidiaries for such fiscal quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous fiscal year, all in reasonable detail and certified by the chief financial officer of Buyer that they fairly present the financial condition of the Company and its Subsidiaries as at the dates indicated and the results of its operations for the periods indicated, subject to changes resulting from normal year-end adjustments;

(ii) Year-End Financials: as soon as available and in any event within ninety (90) days after the end of each fiscal year, (i) the consolidated and consolidating balance sheets of the Company and its Subsidiaries as at the end of such fiscal year and the related consolidated and consolidating statements of income, stockholders' equity and cash flows of each of such Subsidiaries for such fiscal year, setting forth in each case in comparative form the corresponding figures for the previous fiscal year, all in reasonable detail and reviewed by a Certified Public Accountant satisfactory to Seller. The financial reports required to be provided hereunder shall be prepared in accordance with GAAP, applied on a consistent basis;

(iii) Officers' Certificates: together with each delivery of financial statements of the Company and its Subsidiaries pursuant to subsections 6.2(a)(i) and 6.2(a)(ii) above, an Officers' Certificate of Buyer and the Company stating that the signers have reviewed the terms of this Agreement and have made, or caused to be made under their supervision, a review in reasonable detail of the transactions and condition of the Company and its respective Subsidiaries during the accounting period covered by such financial statements and that such review has not disclosed the existence during or at the end of such accounting period, and that the signers do not have knowledge of the existence as at the date of such Officers' Certificate, of any condition or event that constitutes an Event of Default or Potential Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action Buyer and the Company have taken, are taking and/or propose to take with respect thereto;

(iv) Reconciliation Statements: if, as a result of any change in accounting principles and policies, the consolidated financial statements of the Company and its Subsidiaries delivered pursuant to subsection 6.2(a)(i) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subsection had no such change in accounting principles and policies been made, then together with the first delivery of financial statements pursuant to subsection 6.2(a)(i) following such change, a written statement of the chief accounting officer or chief financial officer of Buyer setting forth the differences which would have resulted if such financial statements had been prepared without giving effect to such change;

(v) Tax Returns: As soon as they are available (and in all events within thirty (30) days of completion), copies of all federal corporate tax returns of Buyer;



(vi) Events of Default, etc.: promptly upon any officer of Buyer or the Company obtaining knowledge (i) of any condition or event that constitutes an Event of Default or Potential Event of Default, (ii) that any Person has given any notice to Buyer, the Company or any of their respective Subsidiaries or taken any other action with respect to a claimed default or event or condition of the type referred to in subsection 9.2, or (iii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, an Officers' Certificate specifying the nature and period of existence of such condition, event or change, or specifying the notice given or action taken by any such Person and the nature of such claimed Event of Default, Potential Event of Default, default, event or condition, and what action Buyer or the Company has taken, is taking and/or proposes to take with respect thereto;

(vii) Litigation or Other Proceedings: promptly upon any officer of Buyer or the Company obtaining knowledge of (X) the institution of or non-frivolous threat of any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration against or affecting Buyer, the Company or any of their Subsidiaries or any property of Buyer, the Company or any of their Subsidiaries (collectively, "Proceedings") not previously disclosed in writing by Buyer or the Company to Seller or (Y) any material development in any Proceeding that, in any case:

(1) if adversely determined, has a reasonable possibility of giving rise to a Material Adverse Effect; or

(2) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby;

written notice thereof together with such other information as may be reasonably available to Buyer or the Company to enable Seller and its counsel to evaluate such matters; and

(viii) Other Information: with reasonable promptness, such other information, documentation and data with respect to Buyer, the Company or any of their Subsidiaries as from time to time may be reasonably requested by Seller.

(b) Inspection. As often as may be reasonably requested, Buyer and the Company will permit any authorized representative designated by Seller at Seller's own expense (unless a Potential Event of Default or an Event of Default has occurred and is continuing in which case at Buyer's and/or the Company's expense), to visit and inspect any of Buyer's or the

Company's properties or the properties of any of their respective Subsidiaries, including their financial and accounting records, and to make copies and take extracts therefrom, and to discuss their affairs, finances and accounts with their officers, employees, auditors and independent public accountants (and Buyer and the Company each authorizes such independent public accountants to discuss Buyer's or the Company's respective financial matters with Seller or its representatives and, unless an Event of Default shall have occurred and be continuing, all upon at least three (3) Business Days' notice and at reasonable times during normal business hours.

(c) Corporate Existence, Etc. Buyer and the Company will, and will cause each of their Subsidiaries to, at all times preserve and keep in full force and effect its corporate existence and all rights and franchises material to its business; provided, however, that Buyer and the Company shall not be required to preserve any such right, license or franchise, or corporate or other existence of any Subsidiary (other than the Company), if the Board of Directors of Buyer and/or the Company, as the case may be, shall determine in good faith in accordance with their respective charters and applicable law that the preservation thereof is no longer desirable in the conduct of the business of Buyer, the Company and their respective Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to Seller and will not have a Material Adverse Effect.

(d) Payment of Taxes and Claims; Tax Consolidation. Buyer and the Company will, and will cause each of their respective Subsidiaries to, pay all taxes, assessments and other governmental charges imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty accrues thereon, and all claims (including, without limitation, claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided that no such charge or claim need be paid if being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and if such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor. Buyer and the Company will not, nor will they permit any of their respective Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Buyer, the Company or any of their respective Subsidiaries).

(e) Maintenance of Properties; Insurance. Buyer and the Company will, and will cause each of their respective Subsidiaries to, maintain or cause to be maintained in good

repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Buyer, the Company and their respective Subsidiaries (including, without limitation, intellectual property) and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof. Buyer and the Company will maintain or cause to be maintained, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses and the properties and businesses of their respective Subsidiaries against loss or damage of the kinds customarily carried or maintained under similar circumstances by corporations of established reputation engaged in similar businesses. To the extent that the terms and provisions regarding the payment of insurance contained in any other Transaction Documents conflict with the terms and provisions of this Section 6.7(e), the terms and provisions of such other Transaction Document shall govern.

(f) Compliance with Laws, etc. Buyer and the Company shall, and shall cause each of their respective Subsidiaries to, comply with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, including but not limited to all applicable Environmental Laws, noncompliance with which could reasonably be expected to cause a Material Adverse Effect.

(g) Environmental Disclosure and Inspection.

(i) Buyer and the Company shall exercise due diligence in order to comply with and use its best efforts to cause (x) all tenants under any leases or occupancy agreements affecting any portion of the Facilities and (y) all other Persons on or occupying such property, to comply with all environmental laws.

(ii) Buyer and the Company agree that Seller may, from time to time and in its sole and absolute discretion, retain, at Buyer's and the Company's joint and several expense, an independent professional consultant to review any report relating to hazardous material prepared by or for Buyer or the Company and, whether or not any such report exists, upon reasonable notice to Buyer or the Company, to conduct its own investigation of any Facility currently or previously owned, leased, operated or used by Buyer or the Company, and Buyer and the Company each agree to use its best efforts to obtain permission for Seller's professional consultant to conduct its own investigation of any such Facility, and Buyer and the Company hereby grant to Seller and its agents, employees, consultants and contractors the right to enter into or on to any Facility currently owned, leased, operated or used by Buyer or the Company to perform such tests on such property as are reasonably necessary to conduct such a review and/or investigation. Any

such investigation of any Facility shall be conducted, unless otherwise agreed to by Buyer or the Company and Seller, during normal business hours and, to the extent reasonably practicable shall be conducted with prior notice.

(iii) Buyer and the Company shall promptly advise Seller in writing and in reasonable detail of (vv) any release of any hazardous material required to be reported to any Governmental Authority under any applicable Environmental Laws, (ww) any and all written communications with respect to any Environmental Claims or with respect to any release of hazardous material required to be reported to any Governmental Authority, (xx) any remedial action taken by Buyer or the Company or any other Person in response to (i) any hazardous material on, under or about any Facility, or (ii) any Environmental Claim that reasonably could have a Material Adverse Effect, (yy) Buyer's or the Company's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that reasonably could cause such Facility or any part thereof to be subject to (i) any restrictions on the ownership or transferability thereof or (ii) any material restriction on the occupancy or use thereof under any Environmental Laws, and (zz) any request for information from any Governmental Authority that indicates such Agency is investigating whether Buyer or the Company may be potentially responsible for a release of hazardous Material.

(iv) Buyer and the Company shall promptly notify Seller of (x) any proposed acquisition of stock, assets, or property by Buyer, the Company or any of their respective Subsidiaries that could reasonably be expected to expose Buyer, the Company or any of their respective Subsidiaries to, or result in, Environmental Claims that could have a Material Adverse Effect or that could reasonably be expected to have a material adverse effect on any governmental authorization then held by Buyer, the Company or any of their respective Subsidiaries and (y) any action that Buyer, the Company or any of their respective Subsidiaries proposes to take to commence manufacturing, industrial or other operations that reasonably could be expected to subject Buyer, the Company or any of their respective Subsidiaries to laws, rules or regulations (including, without limitation, laws, rules and regulations requiring additional environmental permits or licenses) not theretofore applicable to any Facility or operations of Buyer, the Company or any of their respective Subsidiaries.

(v) Buyer and the Company each shall, at its own expense, provide copies of such documents or information as Seller may reasonably request in relation to any matters disclosed pursuant to this subsection 6.7(g).

(h) Remedial Action Regarding Hazardous Material.

Buyer and the Company shall promptly take, and shall cause each of their respective Subsidiaries promptly to take, any and all necessary remedial action in connection with the presence, storage, use, disposal, transportation or release of any hazardous material on, under or about any Facility in order to comply with all applicable Environmental Laws and governmental authorizations. In the event Buyer or the Company undertakes any remedial action with respect to any hazardous material on, under or about any Facility, Buyer and the Company shall conduct and complete such remedial action in compliance with all applicable environmental laws and other applicable legal requirements (including lawful policies, orders and directives of federal, state and local governmental authorities).

(i) "Key-Man" Insurance. If and to the extent that Seller, at its sole cost and expense, elects to take out "key-man" life insurance with respect to RHW, RHW agrees to cooperate with respect to Seller's efforts to obtain such insurance, and will submit to any required medical or other examination required in connection therewith.

6.3. Certain Negative Covenants of Buyer and the Company. Buyer and the Company each hereby covenant and agree that, until payment in full of all of the Obligations, unless Seller shall otherwise give prior written consent, which consent will not be unreasonably withheld, Buyer and the Company shall perform, and, to the extent applicable, shall cause each of their respective Subsidiaries to perform, all covenants in this Section 6.3.

(a) Indebtedness. Neither Buyer nor the Company will directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to any Indebtedness except:

(i) Indebtedness in respect of the Note;

(ii) Existing contingent liabilities of the Company and/or certain of its Subsidiaries in favor of Wells Fargo Bank, N.A. pursuant to certain outstanding third party security agreements and/or guarantees; and

(iii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business, provided that such Indebtedness is extinguished within five (5) Business Days of its incurrence.

(b) Liens and Related Matters.

(i) Prohibition on Liens. Buyer and the Company shall not directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Buyer or the Company, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the Uniform Commercial Code of any State or under any similar recording or notice statute, except:

(x) Existing Liens in favor of Wells Fargo Bank, N.A., which shall be governed by Section 7.2(iv) hereof; and

(y) Liens created pursuant to the provisions hereof or any other Transaction Document; and

(z) Liens created with the prior consent of Seller, which consent shall not be unreasonably withheld.

(c) Restricted Junior Payments. Buyer and the Company will not, and will not permit any of their Subsidiaries to, directly or indirectly, declare, make or pay any Restricted Junior Payment.

(d) Fundamental Changes. Neither Buyer, the Company nor any of their Subsidiaries will (i) sell, pledge, assign, transfer or otherwise dispose of, or cause or permit the sale, pledge, assignment, transfer, lease or other disposition of any of their respective businesses, properties or assets, (ii) form, acquire or otherwise permit to exist any Subsidiary or any joint venture or equity or other investment in any other Person, (iii) liquidate or dissolve, (iv) consolidate with or merge with or into or sell, assign, transfer or lease all or substantially all of their respective properties and/or assets as an entirety to any Person, or permit any Person to merge with or into Buyer, the Company or any such Subsidiary.

(e) Transactions with Shareholders and Affiliates. Neither Buyer nor the Company shall, and shall not permit any of their Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of five percent (5%) or more of any class of Capital Stock of Buyer or the Company, as the case may be, with any Subsidiary or other Affiliate of Buyer, the Company or of any such holder, on terms that are less

favorable to Buyer, the Company or that Subsidiary, as the case may be, than those that might be obtained at the time from Persons who are not such a holder or Affiliate as reasonably determined in good faith by the Board of Directors of Buyer; provided that the foregoing restriction shall not apply to (i) any transaction between Buyer and any of its direct or indirect wholly-owned Subsidiaries (other than the Company) or between any of its direct or indirect wholly-owned Subsidiaries (other than the Company) or (ii) reasonable and customary fees paid to members of the Boards of Directors of Buyer, the Company and their Subsidiaries.

(f) Sale or Discount of Receivables. Neither Buyer, the Company or any of their Subsidiaries shall directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof any of its notes or accounts receivable.

(g) Executive Compensation. Neither Buyer, the Company or any of their Subsidiaries shall materially increase the overall compensation directly or indirectly paid or owing to any of their respective employees, as compared to the overall compensation package in effect for such employee immediately prior to the Closing.

(h) Pledge of AFX Stock. Not later than the close of business, Los Angeles time, on Friday, May 16, 1997, Buyer shall cause to be delivered to Seller a Pledge Agreement, substantially in the form of the Pledge Agreement and otherwise acceptable to Seller, Buyer and their respective counsel, pursuant to which the Shareholder(s) of AFX will pledge all of the issued and outstanding shares of the capital stock of AFX as additional security for the Note and the other Obligations.

7. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS. The obligation of Seller to sell the Stock is subject to the fulfillment or waiver by Seller, at or prior to the Closing, of the following conditions:

7.1 Delivery of Documents and Instruments. At the Closing Seller shall have received:

(i) the Closing Cash Payment, the Note and each of the other Transaction Documents, duly executed by Buyer and/or one or more of its Affiliates, and otherwise in form and substance acceptable to Seller;

(ii) appropriate UCC-1 financing statements, duly executed by the "Debtor" named therein, in proper form for filing and otherwise sufficient to perfect all security interests granted to Seller under the Transaction Documents (other than the security interest in the Stock under the Pledge Agreement);

(iii) all certificates evidencing the Shares, duly endorsed to Seller, or accompanied by stock powers duly endorsed to Seller, in either case pursuant to and in furtherance of the Pledge Agreement;

(iv) evidence acceptable to Seller, in its sole discretion, that Buyer and the Company have irrevocably initiated (y) the termination of any guarantees, security agreements or other obligations of the Company and its Affiliates whereby the stock in or assets of such entities are pledged as collateral, and (z) the obtaining of appropriate UCC termination statements with respect thereto, which statements shall be filed with the appropriate Governmental Authorities at the earliest possible time.

(v) a good standing certificate and a tax good standing certificate for Buyer, dated within five (5) days before the Closing, from all jurisdictions in which the Company does business.

(vi) a resignation, in form and substance acceptable to Seller's counsel and dated as of the Closing Date, from RHW as a director and/or officer of Seller.

(vii) such other documents and instruments as Seller may reasonably request.

7.3 Consents and Approvals. Seller shall have received, in writing and in form and substance reasonably acceptable to Seller and its counsel, all necessary authorizations, approvals, waivers and consents with respect to the execution, delivery or performance of this Agreement.

7.4 No Injunction. No preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction in the United States or by a governmental, regulatory or administrative agency or commission of or in the United States, nor any statute, rule, regulation or executive order promulgated or enacted by any government authority in the United States shall be in effect, which would enjoin or prohibit the purchase or sale of the Company; provided, however, that Buyer shall have used all best efforts to prevent such event (including appealing any such adverse decision).

7.5 Documents. All actions, proceedings, instruments, resolutions, certificates and documents reasonably requested by Seller to be delivered to Seller in order to carry out this Agreement shall be reasonably satisfactory to Seller and its counsel.

8. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION. The obligation of Buyer to purchase the Stock is subject to the



fulfillment prior to or at the Closing of the following conditions:

8.1 Delivery of Shares. At the Closing, Seller shall deliver to Buyer all certificates evidencing the Shares, duly endorsed, or accompanied by stock powers duly endorsed to Buyer.

8.2. Consents and Approvals. Buyer shall have received, in writing and in form and substance reasonably acceptable to Seller, all necessary authorizations, approvals, waivers and consents with respect to the execution, delivery or performance of this Agreement.

8.3. No Injunction. No preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction in the United States or by a governmental, regulatory or administrative agency or commission of the United States, nor any statute, rule, regulation or executive order promulgated or enacted by any government authority in the United States shall be in effect, which would enjoin or prohibit the purchase or sale of the Company; provided, however, that Seller shall have used all best efforts to prevent such event (including appealing any such adverse decision).

8.4. Resignations. Buyer shall have received resignations, in form and substance acceptable to Buyer's counsel and dated as of the Closing Date, from Racine Parras and Stephen Hart as officers and/or directors of the Company and any of its subsidiaries.

8.5. Documents. All actions, proceedings, instruments, resolutions, certificates and documents reasonably requested by Buyer to be delivered to Buyer in order to carry out this Agreement shall be reasonably satisfactory to Buyer and its counsel.

#### 9. EVENTS OF DEFAULT

If any one or more of the following conditions or events ("Events of Default") shall occur:

9.1 Failure to Make Payments When Due. Failure by Buyer to pay any installment of principal of the Note when due, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment, redemption or otherwise; or failure by Buyer to pay any interest on the Note or any other amount due under this Agreement within five (5) days after the date due; or

9.2 Default in Other Agreements. (i) Failure of Buyer, the Company or any of their respective Subsidiaries to pay when due any principal of or interest on any Indebtedness (other

than Indebtedness referred to in subsection 9.1) in an aggregate principal amount of Fifty Thousand Dollars (\$50,000) or more, in each case beyond the end of any grace period provided therefor; or (ii) breach or default by Buyer, the Company or any of their respective Subsidiaries with respect to any other material term of any items of Indebtedness with an aggregate principal amount of Fifty Thousand Dollars (\$50,000) or more or any loan agreement, mortgage, indenture or other agreement relating to such Indebtedness, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders) to cause, that Indebtedness to become or be declared due and payable prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be (upon the giving or receiving of notice, lapse of time, both, or otherwise); or

9.3 Breach of Certain Covenants. Failure of Buyer or the Company to perform or comply with any material term or condition of this Agreement.

9.4 Breach of Warranty. Any representation, warranty, certification or other statement made by Buyer, the Company or any of their respective Subsidiaries in any Transaction Document or in any statement or certificate at any time given by Buyer, the Company or any of their respective Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect on the date as of which made; or

9.5 Other Defaults Under Transaction Documents. Buyer or the Company shall default in the performance of or compliance with any term contained in this Agreement or any of the other Transaction Documents, other than any such term referred to in any other subsection of this Section 9, and such default shall not have been remedied or waived within fifteen (15) days after delivery of notice by Seller to Buyer or the Company of such default; or

9.6 Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court having jurisdiction in the premises shall enter a decree or order for relief in respect of Buyer, the Company or any of their respective Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Buyer, the Company or any of their respective Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other

officer having similar powers over Buyer, the Company or any of their respective Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Buyer, the Company or any of their respective Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Buyer, the Company or any of their respective Subsidiaries, and any such event described in this clause (ii) shall continue for sixty (60) days unless dismissed, bonded or discharged; or

9.7 Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Buyer, the Company or any of their respective Subsidiaries shall have an order for relief entered with respect to it or commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver trustee or other custodian for all or a substantial part of its property; or Buyer, the Company or any of their respective Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Buyer, the Company or any of their respective Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Board of Directors of Buyer, the Company or any of their respective Subsidiaries shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (i) above or this clause (ii); or

9.8 Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving in the aggregate at any time an amount in excess of Fifty Thousand Dollars (\$50,000) (in either case not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Buyer, the Company or any of their respective Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days (or in any event later than five (5) days prior to the date of any proposed sale thereunder); or

9.9 Dissolution. Any order, judgment or decree shall be entered against Buyer, the Company or any of their respective Subsidiaries decreeing the dissolution or split up of Buyer, the Company or that Subsidiary and such order shall remain undischarged or unstayed for a period in excess of thirty (30) days; or

9.10 Material Adverse Effect. Any event or change shall occur that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect; or

9.11 Invalidity of Guarantees. Any of the Guarantees, for any reason, other than the satisfaction in full of all Obligations, ceases to be in full force and effect or is declared to be null and void, or any guarantor thereunder denies that it has any further liability under any Guarantee or gives notice to such effect, in each case, to the extent it relates to the Obligations; or

9.12 Impairment of Collateral.

(a) A judgment creditor of Buyer, the Company or any of their respective Subsidiaries shall obtain possession of any portion of the Collateral by any means, including, without limitation, levy, distraint, replevin or self-help, (b) any substantial portion of the Collateral shall be taken by eminent domain or condemnation, (c) any of the Transaction Documents shall cease for any reason to be in full force and effect, or any party thereto shall purport to disavow its obligations thereunder or shall declare that it does not have any further obligations thereunder or shall contest the validity or enforceability thereof or Seller shall cease to have a valid and perfected first priority security interest in any Collateral except as permitted under the terms of such Transaction Document, or (d) Seller's security interests or Liens in Collateral under the Transaction Documents shall become otherwise impaired or unenforceable; or

9.13 Change of Control. A Change of Control shall have occurred or Buyer shall cease to own, directly or through one or more of its wholly-owned Subsidiaries, all of the Capital Stock of the Company.

9.14 Key-Man. The failure of RHW to be employed on a full-time basis as the principal officer in charge of day-to-day operations of Metal Finishing and its Subsidiaries, or, if so employed, to perform such duties in an acceptable manner in accordance with industry standards and norms, as determined by Seller in its sole discretion; provided, however, that occasional temporary absences resulting from vacations or minor illnesses or injuries shall not constitute an Event of Default hereunder.

9.15 Failure to Maintain Required Financial Condition. The Company and its Subsidiaries, on a consolidated basis, shall fail to satisfy or maintain any one or more of the following financial conditions or ratios, determined in accordance with GAAP, except as modified by the following definitions:

(a) Current Ratio (total current assets divided by total current liabilities) at all times greater than or equal to 1.25 to 1.0.

(b) Working Capital (total current assets minus total current liabilities) at all times of not less than Five Hundred Thousand Dollars (\$500,000).

(c) Tangible Net Worth (aggregate of total shareholders' equity plus subordinated debt less any intangible assets) at all times of not less than One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000).

(d) Total Liabilities (aggregate of current and non-current liabilities, less subordinated debt) divided by Tangible Net Worth (as defined in clause (c) above) at all times of not greater than 1.25 to 1.0.

(e) Net income after taxes of not less than One Dollar (\$1) on an annual basis, determined as of each fiscal year end.

THEN in addition to all other remedies of Seller hereunder, under the other Transaction Documents or at law or equity, (i) upon the occurrence of any Event of Default described in subsection 9.6 or 9.7, each of the unpaid principal amount of and accrued interest on the Note and all other Obligations shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Buyer and the Company, and (ii) upon the occurrence and during the continuation of any other Event of Default, Seller may, by written notice to Buyer and Company, declare all or any of the amounts described in clause (i) above to be, and the same shall forthwith become immediately due and payable.

Buyer and the Company hereby waive to the extent not prohibited by applicable law which cannot itself be waived (i) all presentments, demands for performance, notices of nonperformance (except to the extent required by the provisions hereof), (ii) any requirement of diligence or promptness on the part of Seller in the enforcement of its rights under the provisions of this Agreement, (iii) any and all notices of every kind and description which may be required to be given by any statute or rule of law (except to the extent required by the provisions of this Agreement), and (iv) any defense of any kind (other than payment) which it may now or hereafter have with respect to its liability under the Note.

No course of dealing between Buyer, the Company or any of their respective Subsidiaries and Seller shall operate as a waiver of any of the rights of Seller under any Transaction

Document. No delay or omission in exercising any right under any Transaction Document shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any other occasion. The remedies provided in this Section 9 are in addition to all rights and remedies available to Seller under the Transaction Documents or any other document or by law or equity.

**10. SURVIVAL OF REPRESENTATIONS AND WARRANTIES:  
INDEMNIFICATION.**

**10.1 Survival of Representation and Warranties.** All representations and warranties made by Seller or the Buyer shall survive the Closing for a period of one (1) year.

**10.2 Obligation of Seller to Indemnify.** Seller shall indemnify, defend and hold Buyer harmless from and against any and all liabilities, damages, claims, losses, costs and expenses (including reasonable attorneys, accounting and expert witness fees other than legal and accounting fees associated with negotiation, preparation and performance of this Agreement) incurred by Buyer or the Company, arising out of or resulting from (i) any breach of any warranty or representation by Seller contained herein or (ii) any breach of any of the covenants or agreements to be performed by Seller under this Agreement.

**10.3 Obligation of Buyer to Indemnify.**

(a) Buyer shall indemnify, defend and hold Seller harmless from and against any and all liabilities, damages, claims, losses, costs and expenses (including reasonable attorneys', accounting and expert witness fees other than legal and accounting fees associated with negotiation, preparation and performance of this Agreement) incurred by Seller, arising out of or resulting from (i) any breach of any warranty or representation by Buyer contained herein or (ii) any breach of any of the covenants or agreements to be performed by Buyer under this Agreement.

(b) Without limiting the generality of the foregoing Section 10.3(a), Buyer shall indemnify and hold Seller harmless from and against any federal, state and/or local income or franchise tax (including interest and penalties) payable by the consolidated filing group of which Seller and Buyer are a part (the Filing Group") and relating to the period ending on the Closing Date and which is assessed against the Filing Group as a result of any information provided to the Filing Group by the Company and/or any of its subsidiaries.

#### 10.4 Reimbursement.

(a) Subject to the right of Seller to assume the control of the contest and defense of a claim pursuant to Section 10.5(c), Seller agrees to pay or reimburse Buyer within thirty (30) days after receipt of written request therefor for any payment made or to be made immediately by Buyer or the Company or any loss, damage, cost or expense suffered by Buyer or the Company at any time after the date hereof in respect of any matter to which the indemnity referred to in Section 10.2 relates.

(b) Subject to the right of Buyer to assume control of the contest and defense of a claim pursuant to Section 10.5(c), Buyer agrees to pay or reimburse Seller within thirty (30) days after receipt of written request therefor for any payment made or to be made immediately by Seller for any loss, damage, cost or expense suffered by Seller at any time after the date hereof in respect of any matter to which the indemnity referred to in Section 10.3 relates.

#### 10.5 Conditions of Indemnification.

(a) Whenever any claim is made by any person not a party to this Agreement with respect to any matter to which the indemnifications contained in this Section 11 relate, the indemnified party (the "Indemnitee") shall notify the indemnifying party (the "Indemnitor") in writing within twenty (20) days after the Indemnitee has written notice of the facts constituting the basis for such claim (the "Notice of Claim"). Whenever any claim is made by one of the parties to this Agreement with respect to any matter to which the indemnification contained in this Section 10 relates, as soon as practicable after the Indemnitee becomes aware of such claim, the Indemnitee shall send a Notice of Claim to the Indemnitor. The Notice of Claim shall specify all facts known to the Indemnitee giving rise to such indemnification claim, shall include a copy of all relevant documents in the possession or control of Indemnitee, and the amount or an estimate of the amount of the liability arising therefrom.

(b) Each claim will be deemed approved by the Indemnitor, unless the Indemnitor gives the Indemnitee written notice of disapproval within thirty (30) days of receipt of the corresponding Notice of Claim. The parties shall undertake, in good faith, to resolve any dispute with respect to any such claim which is so disapproved.

(c) If the facts giving rise to any such indemnification shall involve any actual, threatened or possible claim or demand by any person against the Indemnitee, the Indemnitor shall be entitled (but not obligated) to contest or

defend such claim at its expense and through counsel of its own choosing if it gives written notice of its intention to indemnify the Indemnatee and to assume the contest and defense of such claim to the Indemnatee promptly after receipt of the Notice of Claim.

If the Indemnitor shall exercise its option to defend as set forth above, it shall have control over such contest and defense and over the payment, settlement or compromise of such claim, and the Indemnatee agrees to cooperate fully with the Indemnitor and its attorneys, at the Indemnitor's expense, with respect to such contest and defense. If the Indemnatee desires to participate in, but not control, any such contest and defense, the Indemnatee may do so bearing its own cost and expense of such participation. If the Indemnitor shall not exercise such option, the Indemnatee may, but shall not be obligated to, assume the contest and defense of such claim. The Indemnitor shall not be liable for any settlement of any such claim effected without its written consent but, if settled with its written consent, or if there be a final non-appealable judgment for the plaintiff in any such contest, any payment or settlement resulting from such contest shall be binding upon the Indemnitor and Indemnatee.

(d) No Notice of Claim with respect to the breach of any representation or warranty addressed to the party against which indemnification is claimed shall be valid if received by such party after the expiration of the applicable survival period set forth in Section 10.1.

## **11. MISCELLANEOUS.**

**11.1 Entire Agreement; Amendment; Waiver.** This Agreement (together with the Exhibits and Schedules hereto, all of which are hereby incorporated by reference herein and made a part hereof) supersedes all previous arrangements or understandings, whether written or oral, and contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement may be modified, varied or otherwise amended only by a writing, of even or subsequent date hereto, signed by the party to be bound by such amendment. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom enforcement of such waiver is sought.

**11.2 Notices; Consent to Service.** All notices, demands, requests consents, approvals or other instruments required or permitted to be given pursuant hereto shall be in writing and shall be deemed to have been given upon (i) actual receipt, if hand delivered, (ii) confirmed transmission, if delivered by facsimile transmission, except if such facsimile is transmitted other than between 8:00 a.m. and 5:00 p.m. on a



Business Day, such facsimile transmission shall be deemed to have been received the next business day, (iii) the next Business Day, if delivered by express delivery service or overnight courier service and such delivery is confirmed by such service, or (iv) the third business day following the day of deposit of such notice in registered or certified mail, postage prepaid, return receipt requested. Notices shall be provided to the addresses (or facsimile numbers, as applicable) specified below:

If to Seller: PCA Aerospace, Inc.  
225 Oregon Street  
El Segundo, California 90245  
Attn: Mrs. Racine Parras  
Tel: (310) 322-2762  
Fax: (310) 322-3128

If to Buyer: AFX Wheels, Inc.  
1818 Rosslynn Avenue  
Fullerton, California 92831  
Attn: Mr. Robert Winters  
Tel: (714) 871-2490  
Fax: (714) 738-5288

with a copy to: Mr. Peter Gilbert  
610 West End Avenue  
Apt. 12C  
New York, New York 10024  
PRVY-Controlled/Privacy  
Fax: (718) 274-3886

or to such other addresses as are designated by notice pursuant to this Section 11.2.

**11.3 Rights Under This Agreement: Nonassignability.**  
This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall not be assigned by either party without the prior written consent of the other party. Nothing contained in this Agreement is intended to confer upon any person, other than the parties to this Agreement and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**11.4 Severability.** Should any part or portion of this Agreement or any provision thereof be held invalid, illegal or void, the remainder of such part or portion of this Agreement or provision thereof shall continue in full force and effect as if the void, illegal or invalid part, portion or provision had been deleted here from or never included herein. In the event that any material provision of this Agreement shall be stricken or declared invalid, the parties hereto agree to use their best

efforts to reform this Agreement in a manner consistent with their original intentions.

**11.5 Form of this Agreement.** Captions to the various provisions in this Agreement and the Exhibits hereto are for the convenience of the reader only and shall not be construed as affecting the meaning or interpretation of any provision of this Agreement. Terms used in the singular shall be read in the plural, and vice versa, and terms used in the neuter gender shall be read in the feminine or masculine gender when the context so requires.

**11.6 Governing Law/Venue.** This Agreement has been entered into under, and shall be construed and enforced in accordance with, the laws of the State of California. Any actions, suits or proceedings instituted in connection herewith shall be instituted and maintained exclusively in the Superior Court for the State of California, County of Los Angeles, Central District.

**11.7 No Party Deemed Drafter.** The parties agree that neither party shall be deemed to be the drafter of this Agreement and that, in the event this Agreement is ever construed by a court of law or equity, such court shall not construe this Agreement or any provision hereof against either party as the drafter of this Agreement, Seller and Buyer acknowledging that both parties have contributed substantially and materially to the preparation hereof.

**11.8 Further Assurances.** From time to time, at the request and expense of the requesting party, whether at or after the Closing, without further consideration and without increasing either party's obligations hereunder, the other party shall execute and deliver such further instruments and take such other action as the requesting party may reasonably request in order to effectuate the transactions set forth herein.

**11.9 No Third Party Beneficiaries.** Except as otherwise specifically provided herein, no term or provision of this Agreement is intended to be, or shall be, for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.

**11.10 Costs of Enforcement.** If any party to this Agreement seeks to enforce its rights under this Agreement, the non-prevailing party shall pay all costs and expenses incurred by the prevailing party including, without limitation, reasonable attorneys' fees. For purposes of this Section 11.10, the "prevailing party" shall be the party who obtains substantially the relief sought by such party, whether by compromise,

settlement, judgment or arbitration award. Nothing in this Section 11.10 shall diminish the Indemnitor's obligations under Section 10.

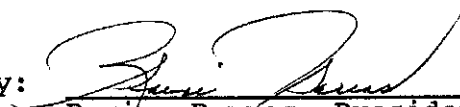
**11.11 Counterparts.** This Agreement may be executed by facsimile and/or in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

Seller:

PCA Aerospace, Inc.,  
a California corporation

By:

  
Racine Parras, President

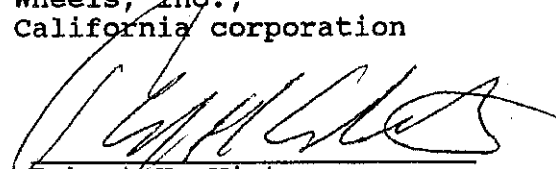
By:

  
Stephen Hart, Chief  
Financial Officer

Buyer:

AFX Wheels, Inc.,  
a California corporation

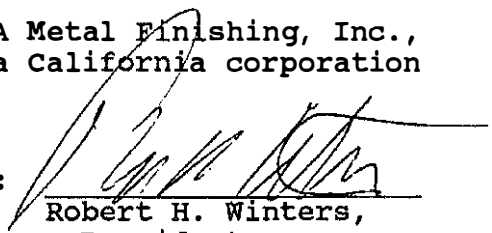
By:

  
Robert H. Winters,

Ratified and Adopted  
as of April 30, 1997

PCA Metal Finishing, Inc.,  
a California corporation

By:

  
Robert H. Winters,  
President

# Exhibit C

# Exhibit C-1

1900348

ARTICLES OF INCORPORATION  
OF  
AFX WHEELS, INC.

FILED  
In the office of the Secretary of State  
of the State of California

JAN 31 1996

*Bill Jones*  
BILL JONES, Secretary of State

I

The name of this Corporation is AFX WHEELS, INC.

II

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California, other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California for this Corporation's initial agent for service of process is:

JOHN G. CRUZ  
Daehnke & Cruz  
3200 Park Center Drive  
Suite 800  
Costa Mesa, California 92626

IV

This Corporation is authorized to issue only one class of shares of stock; and the total number of shares which this Corporation is authorized to issue is 1,000,000.

Dated: 1/30/96

*John G. Cruz*  
John G. Cruz,  
Incorporator

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

Dated: 1/24/96

*John G. Cruz*  
John G. Cruz

WINEPA001262

# Exhibit C-2

**BYLAWS OF  
AFX WHEELS, INC.,  
A CALIFORNIA CORPORATION**



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BYLAWS OF  
AFX WHEEL, INC.,  
A CALIFORNIA CORPORATION

ARTICLE I  
OFFICES

Section 1. Principal Office. The Board of Directors shall fix the location of the principal executive office of the Corporation at any place within or outside the State of California. If the principal executive office is located outside this state, and the Corporation has one or more business offices in this state, the Board of Directors shall fix and designate a principal business office in the State of California.

Section 2. Other Offices. The Board of Directors may at any time establish, or may designate an officer of the Corporation to establish, branch or subordinate offices at any place or places where the Corporation is qualified to do business.

ARTICLE II  
MEETINGS OF SHAREHOLDERS

Section 1. Place of Meetings. Meetings of shareholders shall be held at any place within or outside the State of California designated by the Board of Directors. In the absence of such designation, shareholders' meetings shall be held at the principal executive office of the Corporation.

Section 2. Annual Meeting. The annual meeting of shareholders shall be held each year on a date and at a time designated by the Board of Directors. At each annual meeting, Directors shall be elected, and any other proper business may be transacted.

Section 3. Special Meeting. A special meeting of the shareholders may be called at any time by the Board of Directors, or by the Chairman of the Board, or by the President, or by one or more shareholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes at that meeting.

If a special meeting is called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the time of such meeting and the general nature of the

business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the Chairman of the Board, the President, any Vice President, or the Secretary of the Corporation. The officer receiving the request shall cause notice of a special meeting to be given promptly to the shareholders entitled to vote, in accordance with the provisions of Sections 4 and 5 of this Article II. The meeting shall be held at the time requested by the person or persons calling the meeting, which must not be less than thirty-five (35) nor more than sixty (60) days after the receipt of the request. If the notice is not given within twenty (20) days after receipt of the request, the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph or this Section 3 shall be construed as limiting, fixing or affecting the time when a meeting of shareholders called by action of the Board of Directors may be held.

Section 4. Notice of Shareholders' Meetings. All notice of meetings of shareholders shall be sent or otherwise given in accordance with Section 5 of this Article II not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and (i) in the case of a special meeting, the general nature of the business to be transacted, or (ii) in the case of the annual meeting, those matters which the Board of Directors, at the time of giving the notice, intends to present for action by the shareholders. The notice of any meeting at which Directors are to be elected shall include the name of any nominee or nominees whom, at the time of the notice, management intends to present for election.

If action is proposed to be taken at any meeting for approval of (i) a contract or transaction in which a Director has a direct or indirect financial interest, pursuant to Section 310 of the Corporations Code of California, (ii) an amendment of the Articles of Incorporation, pursuant to Section 902 of that Code, (iii) a reorganization of the Corporation, pursuant to Section 1201 of that Code, (iv) a voluntary dissolution of the Corporation, pursuant to Section 1900 of that Code, or (v) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, pursuant to Section 2007 of that Code, then the notice shall also state the general nature of that proposal.

Section 5. Manner of Giving Notice: Affidavit of Notice. Notice of any meeting of shareholders shall be given either personally or by first-class mail or telegraphic or other written communication, charges prepaid, addressed to the shareholder at the address of that shareholder appearing on the books of the Corporation or given by the shareholder to the Corporation for the purpose of notice. If no such address appears on the Corporation books or is given, notice shall be deemed to have been given if sent to that shareholder by first-class mail or telegraphic or

other written communication to the Corporation's principal executive office, or if published at least once in a newspaper of general circulation in the county where that office is located. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by telegram or other means of written communication.

If any notice addressed to a shareholder at the address of that shareholder appearing on the books of the Corporation is returned to the Corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the shareholder at that address, all future notices or reports shall be deemed to have been duly given without further mailing if these shall be available to the shareholder on written demand of the shareholder at the principal executive office of the Corporation for a period of one year from the date of the giving of the notice.

An affidavit of the mailing or other means of giving any notice of any shareholders' meeting shall be executed by the Secretary, Assistant Secretary, or any transfer agent of the Corporation giving the notice, and shall be filed and maintained in the minute book of the Corporation.

Section 6. Quorum. The presence in person or by proxy of the holders of a majority of the shares entitled to vote at any meeting of shareholders shall constitute a quorum for the transaction of business. The shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

Section 7. Adjourned Meeting: Notice. Any shareholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the shares represented at that meeting, either in person or by proxy, but in the absence of a quorum, no other business may be transacted at that meeting, except as provided in Section 6 of this Article II.

When any meeting of shareholders, either annual or special, is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at a meeting at which the adjournment is taken. Notice of such an adjourned meeting must be given if (i) the time and place are not announced at the meeting at which the adjournment is taken, (ii) a new record date for the adjourned meeting is fixed, or (iii) the adjournment is for more than forty-five (45) days from the date set for the original meeting. If adjournment is set for more than forty-five (45) days from the date set for the original meeting, then the

Board of Directors shall set a new record date. Where notice of an adjourned meeting is required, it shall be given to each shareholder of record entitled to vote at the adjourned meeting in accordance with the provisions of Sections 4 and 5 of this Article II. At any adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting.

Section 8. Voting. The Shareholders entitled to vote at any meeting of shareholders shall be determined in accordance with the provisions of Section 11 of this Article II, subject to the provisions of Section 702 to 704, inclusive, of the Corporations Code of California (relating to voting shares held by a fiduciary, in the name of a corporation, or in joint ownership). The shareholders' vote may be by voice vote or by ballot; provided, however, that any election for Directors may be by ballot if demanded by any shareholder before the voting has begun. On any matter other than election of Directors, any shareholder may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal, but, if the shareholder fails to specify the number of shares which the shareholder is voting affirmatively, it will be conclusively presumed that the shareholder's approving vote is with respect to all shares that the shareholder is entitled to vote. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on any matter (other than the election of Directors) shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by California General Corporation Law or by the Articles of Incorporation.

At a shareholders' meeting at which directors are to be elected, no shareholder shall be entitled to cumulate votes (i.e., cast for any one or more candidates a number of votes greater than the number of the shareholder's shares) unless the candidates' names have been placed in nomination prior to commencement of the voting and a shareholder has given notice prior to the commencement of the voting of the shareholder's intention to cumulate votes. If any shareholder has given such a notice, then every shareholder entitled to vote may cumulate votes for candidates in nomination and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which that shareholder's shares are entitled, or distribute the shareholder's votes on the same principle among any or all of the candidates, as the shareholder thinks fit. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be elected.

Section 9. Waiver of Notice or Consent by Absent Shareholders. The transaction of business at any meeting of shareholders, either annual or special, however called and noticed, and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present

either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, who was not present in person or by proxy, signs a written waiver of notice or a consent to a holding of the meeting, or an approval of the minutes. The waiver of notice or consent need not specify either the business to be transacted or the purpose of any annual or special meeting of shareholders, except that, if action is taken or proposed to be taken for approval of any of those matters specified in the second paragraph of Section 4 of this Article II, the waiver of notice or consent shall state the general nature of the proposal. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting if that objection is expressly made at the meeting.

Section 10. Shareholder Action By Written Consent Without a Meeting. Any action which may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, is signed by the holders of the outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote thereon were present and voted. In the case of election of Directors, such a consent shall be effective only if signed by the holders of all outstanding shares entitled to vote for the election of Directors; provided, however, that a Director may be elected at any time to fill a vacancy on the Board of Directors. All such consents shall be filed with the Secretary of the Corporation and shall be maintained in the corporate records. Any shareholder giving a written consent, or the shareholder's proxy holders, or a transferee of the shares or a personal representative of the shareholder or their respective proxy holders, may revoke the consent by a writing received by the Secretary of the Corporation before written consent of the number of shares required to authorize the proposed action have been filed with the Secretary.

If the consent of all shareholders entitled to vote have not been solicited in writing, and if the unanimous written consent of all such shareholders shall not have been received, the Secretary shall give prompt notice of the corporate action approved by the shareholders without a meeting. This notice shall be given in the manner specified in Section 5 of this Article II. If the shareholder action results in approval of (i) contracts or transactions in which a Director has a direct or indirect financial interest, pursuant to Section 310 of the Corporations Code of

California, (ii) indemnification of agents of the Corporation, pursuant to Section 317 of that Code, (iii) a reorganization of the Corporation, pursuant to Section 1201 of that Code, and (iv) a distribution in dissolution other than in accordance with the rights of outstanding preferred shares, pursuant to Section 2007 of that Code, then the notice shall be given at least ten (10) days before the consummation of any action authorized by that approval.

Section 11. Record Date for Shareholder Notice, Voting and Giving Consent. For purposes of determining the shareholders entitled to notice of any meeting or to vote or entitled to give consent to corporate action without a meeting, the Board of Directors may fix, in advance, a record date which shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting nor more than sixty (60) days before any such action without a meeting, and in this event only shareholders of record on the date so fixed are entitled to notice and to vote or to give consent, as the case may be, notwithstanding any transfer of any shares on the books of the Corporation after the record date, except as otherwise provided in the California General Corporation Law.

If the Board of Directors does not so fix a record date:

(a) The record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the business day preceding the day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.

(b) The record date for determining shareholders entitled to give consent to corporate action in writing without a meeting, (i) when no prior action by the Board has been taken, shall be the day on which the first written consent is given, or (ii) when prior action of the Board has been taken, shall be at the close of business on the day on which the Board adopts the resolution authorizing such action, or the day on which the first written consent is given, whichever is later.

Section 12. Proxies. Every person entitled to vote for Directors or on any other matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the Secretary of the Corporation. A proxy shall be deemed signed if the shareholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the shareholder or the shareholder's attorney-in-fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it, before the vote pursuant to that proxy, by a writing delivered to the Corporation stating that the proxy is revoked, or by a subsequent proxy executed by, or attendance at the meeting and voting in person by, the person executing the proxy; or (ii)



written notice of the death or incapacity of the maker of that proxy is received by the Corporation before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy. The revocability of a proxy that states on its fact that it is irrevocable shall be governed by the provisions of Sections 705(e) and 705(f) of the Corporations Code of California.

Section 13. Inspector of Elections. Before any meeting of shareholders, the Board of Directors may appoint any persons other than nominees for office to act as inspectors of election at the meeting or its adjournment. If no inspectors of election are so appointed, the Chairman of the meeting may, and on the request of any shareholder or a shareholder's proxy shall, appoint inspectors of election at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting on the request of one or more shareholders or proxies, the holders of a majority of shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If any person appointed as inspector fails to appear or fails or refuses to act, the Chairman of the meeting may, and upon the request of any shareholder or a shareholder's proxy shall, appoint a person to fill that vacancy.

These inspectors shall:

(a) Determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;

(b) Receive votes, ballots, or consents;

(c) Hear and determine all challenges and questions in any way arising in connection with the right to vote;

(d) Count and tabulate all votes or consents;

(e) Determine when the polls shall close;

(f) Determine the result; and

(g) Do any other acts that may be proper to conduct the election or vote with fairness to all shareholders.

## ARTICLE III

### DIRECTORS

Section 1. Powers. Subject to the provisions of the California General Corporation Law and any limitations in the Articles of Incorporation and these Bylaws relating to action required to be approved by the shareholders or by the outstanding shares, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

Without prejudice to these general powers, and subject to the same limitations, the Directors shall have the power to:

(a) Select and remove all officers, agents, and employees of the Corporation; prescribe any powers and duties for them that are consistent with law, with the Articles of Incorporation, and with these Bylaws; fix their compensation; and require from them security for faithful service;

(b) Change the principal executive office or the principal business office in the State of California from one location to another; cause the Corporation to be qualified to do business in any other state, territory, dependency, or country and conduct business within or without the State of California; and designate any place within or without the State of California for the holding of any shareholders' meeting, or meetings, including annual meetings;

(c) Adopt, make and use a corporate seal; prescribe the forms of certificates of stock; and alter the form of the seal and certificates;

(d) Authorize the issuance of shares of stock of the Corporation on any lawful terms, in consideration of money paid, labor done, services actually rendered, debts or securities canceled, or tangible or intangible property actually received; and

(e) Borrow money and incur indebtedness on behalf of the Corporation, and cause to be executed and delivered for the Corporation's purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.

Section 2. Number and Qualification of Directors. The authorized number of Directors shall be ONE (1) until changed by a duly adopted amendment to the Articles of Incorporation or by an amendment to these Bylaws adopted by the vote or written consent of holders of a majority of the outstanding shares entitled to vote.

Section 3. Election and Term of Office of Directors. Directors shall be elected at each annual meeting of the shareholders to hold office until the next annual meeting. Each Director, including a Director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

Section 4. Vacancies. Vacancies in the Board of Directors may be filled by a majority of the remaining Directors, though less than a quorum, or by a sole remaining Director, except that a vacancy created by the removal a Director by the vote or written consent of the shareholders or by court order may be filled only by the vote of a majority of the shares entitled to vote represented at a duly held meeting at which a quorum is present, or by the written consent of holders of all of the outstanding shares entitled to vote for the election of Directors. Each Director so elected shall hold office until the next annual meeting of the shareholders and until a successor has been elected and qualified.

A vacancy or vacancies in the Board of Directors shall be deemed to exist in the event of the death, resignation, or removal of any Director, or if the Board of Directors by resolution declares vacant the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony, or if the authorized number of Directors is increased, or if the shareholders fail, at any meeting of shareholders at which any Director or Directors are elected, to elect the number of Directors to be voted for at that meeting.

The shareholders may elect a Director or Directors at any time to fill any vacancy or vacancies not filled by the Directors, but any such election by written consent other than to fill a vacancy created by removal shall require the consent of a majority of the outstanding shares entitled to vote.

Any Director may resign effective on giving written notice to the Chairman of the Board, the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for that resignation to become effective. If the resignation of a Director is effective at a future time, the Board of Directors may elect a successor to take office when the resignation becomes effective.

No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

Section 5. Place of Meetings and Meetings by Telephone. Regular meetings of the Board of Directors may be held at any place within or outside the State of California that has been designated from time to time by resolution of the Board. In the absence of such a designation, regular meetings shall be held at the principal

executive office of the Corporation. Special meetings of the Board shall be held at any place within or outside the State of California that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, at the principal executive office of the Corporation. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at the meeting.

Section 6. Annual Meeting. Immediately following each annual meeting of shareholders, the Board of Directors shall hold a regular meeting for the purpose of organization, any desired election of officers, and transaction of other business. Notice of this meeting shall not be required.

Section 7. Other Regular Meetings. Other regular meetings of the Board of Directors shall be held without call at such time as shall from time to time be fixed by the Board of Directors. Such regular meetings may be held without notice.

Section 8. Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board, the President, any Vice President, the Secretary or, if applicable, any two (2) Directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each Director or sent by first-class mail or telegram, charges prepaid, addressed to each director at that Director's address as it is shown on the records of the Corporation. In case the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. In case the notice is delivered personally, or by telephone or telegram, it shall be delivered personally or by telephone or to the telegraph company at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the Director or to a person at the office of the Director who the person giving the notice has reason to believe will promptly communicate it to the Director. The notice need neither specify the purpose of the meeting nor, if the meeting is to be held at the principal executive office of the Corporation, the place.

Section 9. Quorum. A majority of the authorized number of Directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 11 of this Article III. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, subject to the provisions of Section 310 of the Corporations Code of California (as to approval of contracts or transactions in which

a director has a direct or indirect material financial interest), and Section 311 of that Code (as to appointment of committees), and Section 317(e) of that Code (as to indemnification of directors). A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 10. Waiver of Notice. The transaction of business at any meeting of the Board of Directors, however, called and noticed or wherever held, shall be as valid as though had at meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting, before or at its commencement, the lack of notice to that Director.

Section 11. Adjournment. A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 12. Notice of Adjournment. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case notice of the time and place shall be given before the time of the adjourned meeting, in the manner specified in Section 8 of this Article III, to the Directors who were not present and the time of the adjournment.

Section 13. Action Taken Without a Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 14. Fees and Compensation of Directors. Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Directors. This Section 14 shall not be construed to preclude any Director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation for those services.

## ARTICLE IV

### COMMITTEES

Section 1. Committees of Directors. The Board of Directors may, by resolution adopted by a majority of the authorized number of Directors, designate one or more committees, each consisting of two or more Directors, to serve at the pleasure of the Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent member at any meeting of any committee. Any committee, to the extent provided in the resolution of the board, shall have all the authority of the Board, except with respect to:

(a) The approval of any action which, under the General Corporation Law of California, also requires shareholders' approval or approval of the outstanding shares;

(b) The filling of vacancies on the Board of Directors or in any committee;

(c) The fixing of compensation of the Directors for serving on the Board or on any committee;

(d) The amendment or repeal of Bylaws or the adoption of new Bylaws;

(e) The amendment or repeal of any resolution of the Board of Directors which by its express terms is not so amendable or repealable;

(f) A distribution to the shareholders of the Corporation, except at a rate or in a periodic amount or within a price range determined by the Board of Directors; or

(g) The appointment of any other committees of the Board of Directors or the members of these committees.

Section 2. Meetings and Actions of Committees. Meetings and action of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these Bylaws, Sections 5 (place of meetings, 7 (regular meetings), 8 special meetings and notice), 9 (quorum), 10 (waiver of notice), 11 (adjournment), 12 (notice of adjournment), and 13 (action without meeting), with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee; special meetings of committees may also be called by resolution of the Board of Directors; and notice of special meetings of committees shall also be given to all alternate members, who shall have the

right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

## ARTICLE V

### OFFICERS

Section 1. Officers. The officers of the Corporation shall be a President, a Secretary, and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board, one or more Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article V. Any number of offices may be held by the same person.

Section 2. Election of Officers. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article V, shall be chosen by the Board of Directors, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Subordinate Officers. The Board of Directors may appoint, and may empower the President to appoint, such other officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the Bylaws or as the Board of Directors may from time to time determine.

Section 4. Removal and Resignation of Officers. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board of Directors, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in the notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 5. Vacancies in Offices. A vacancy in any office because of death, resignation, removal, disqualification or any

other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

Section 6. Chairman of the Board. The Chairman of the Board, if such an officer be elected, shall, if present, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 7 of this Article V.

Section 7. President. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an officer, the President shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the Corporation. The President shall preside at all meetings of the shareholders and, in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board of Directors. The President shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws.

Section 8. Vice Presidents. In the absence or disability of the President, the Vice Presidents, if any, in order of their rank as fixed by the Board of Directors, or, if not ranked, a Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. Each Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or the Bylaws, and the President, or the Chairman of the Board.

Section 9. Secretary. The Secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of Directors, committees of Directors, and shareholders, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at Directors' meetings or committee meetings, the number of shares present or represented at shareholders' meetings, and the proceedings.

The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board of Directors, a share register, or a duplicate share register, showing the names of all shareholders and their addresses, the number and classes of shares held by each, the



number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all meetings of the Shareholders and of the Board of Directors required by the Bylaws or Bylaw to be given, and he shall keep the seal of the Corporation if one be adopted, in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by the Bylaws.

Section 10. Chief Financial Officer. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any Director.

The Chief Financial Officer shall deposit all monies and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, shall render to the President and Directors, whenever they request it, an account of all of his transactions as Chief Financial Officer and of the financial condition of the Corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

## ARTICLE VI

### INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

The Corporation shall have the authority, to the maximum extent permitted by the California General Corporation Law, to indemnify each of its agents against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact any such person is or was an agent of the Corporation. For purposes of this Section, an "agent" of the Corporation includes any person who is or was a Director, officer, employee, or other agent of the Corporation, or is or was serving at the request of the corporation as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or was a Director, officer, employee, or agent of a corporation which was a

predecessor corporation of the Corporation or of another enterprise at the request of such predecessor corporation.

## ARTICLE VII

### RECORDS AND REPORTS

Section 1. Maintenance and Inspection of Shares Register. The Corporation shall keep at its principal executive office, or at the office of its transfer agent or registrar, if either be appointed and as determined by resolution of the Board of Directors, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of shares held by each shareholder.

A shareholder or shareholders of the Corporation holding at least five percent (5%) in the aggregate of the outstanding voting shares of the Corporation may (i) inspect and copy the records of shareholders' names and addresses and shareholders during usual business hours on five (5) days prior written demand on the Corporation, and (ii) obtain from the transfer agent of the Corporation, on written demand and on the tender of such transfer agent's usual charges for such list, a list of the shareholders' names and addresses, who are entitled to vote for the election of directors, and their share holdings, as of the most recent record date for which that list has been compiled or as of a date specified by the shareholder after the date of demand. This list shall be made available to any such shareholder by the transfer agent on or before the later of five (5) days after the demand is received or the date specified in the demand as the date as of which the list is to be compiled. The record of shareholders shall also be open to inspection on the written demand of any shareholder or holder of a voting trust certificate, at any time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder or as the holder of a voting trust certificate. Any inspection and copying under this Section 1 may be made in person or by an agent or attorney of the shareholder or holder of a voting trust certificate making the demand.

Section 2. Maintenance and Inspection of Bylaws. The Corporation shall keep at its principal executive office, or if its principal executive office is not in the State of California, at its principal business office in this state, the original or a copy of the Bylaws as amended to date, which shall be open to inspection by the shareholders at all reasonable times during office hours. If the principal executive office of the Corporation is outside the State of California and the Corporation has no principal business office in this state, the Secretary shall, upon the written request of any shareholder, furnish to that shareholder, a copy of the Bylaws as amended to date.

Section 3. Maintenance and Inspection of Other Corporate Records. The accounting books and records and minutes of proceedings of the shareholders and the Board of Directors and any committee or committees of the Board of Directors shall be kept at such place or places designated by the Board of Directors, or, in the absence of such designation, at the principal executive office of the Corporation. The minutes shall be kept either in written form or any other form capable of being converted into written form. The minutes and accounting books and records shall be open to inspection upon the written demand of any shareholder or holder of a voting trust certificate, at any reasonable time during usual business hours, for a purpose reasonably related to the holder's interests as a shareholder or as the holder of a voting trust certificate. The inspection may be made in person or by an agent or attorney, and shall include the right to copy and make extracts. These rights of inspection shall extend to the records of each subsidiary corporation of the Corporation.

Section 4. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the Corporation and each of its subsidiary corporations. This inspection by a Director may be made in person or by an agent or attorney and the right of inspection includes the right to copy and make extracts of documents.

Section 5. Annual Report to Shareholders. The annual report to shareholders referred to in Section 1501 of the California General Corporation Law is expressly dispensed with, but nothing herein shall be interpreted as prohibiting the Board of Directors from issuing annual or other periodic reports to the shareholders of the Corporation as they consider appropriate.

Section 6. Financial Statements. A copy of any annual financial statement and any income statement of the Corporation for each quarterly period of each fiscal year, and any accompanying balance sheet of the Corporation as of the end of each such period, that has been prepared by the Corporation shall be kept on file in the principal executive office of the Corporation for twelve (12) months and each such statement shall be exhibited at all reasonable times to any shareholder demanding an examination of any such statement or a copy shall be mailed to any such shareholder.

If a shareholder or shareholders holding at least five percent (5%) of the outstanding shares of any class of stock of the Corporation makes a written request to the Corporation for an income statement of the Corporation for the three-month, six-month, or nine-month period of the then current fiscal year ended more than thirty (30) days before the date of the request, and a balance sheet of the Corporation as of the end of that period, the Chief Financial Officer shall cause that statement to be prepared, if not already prepared, and shall deliver personally or mail that

statement or statements to the person making the request within thirty (30) days after the receipt of the request.

The Corporation shall also, on the written request of any shareholder, mail to the shareholder a copy of the last annual, semi-annual, or quarterly income statement which it has prepared, and a balance sheet as of the end of that period.

The quarterly income statements and balance sheets referred to in this section shall be accompanied by the report, if any, of any independent accountants engaged by the Corporation or the certificate of an authorized officer of the Corporation that the financial statements were prepared without audit from the books and records of the Corporation.

Section 7. Annual Statement of General Information. The Corporation shall, during a six (6) month calendar period including the calendar month of incorporation and the preceding five (5) months, file with the Secretary of State of the State of California, on the prescribed form, a statement setting forth the authorized number of Directors, the names and complete business or residence addresses of all incumbent Directors, the names and complete business or residence addresses of the Chief Executive Officer, Secretary, and Chief Financial Officer, the street address of its principal business activity of the Corporation, together with a designation of the agent of the Corporation for the purpose of service of process, all in compliance with Section 1502 of the Corporations Code of California.

## ARTICLE VIII

### GENERAL CORPORATE MATTERS

Section 1. Record Date for Purposes Other than Notice and Voting. For purposes of determining the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any other lawful action (other than action by shareholders by written consent without a meeting), the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) days before any such action, and in that case, only shareholders of record on the date so fixed are entitled to receive the dividend, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the Corporation after the record date so fixed, except as otherwise provided in the California General Corporation Law.

If the Board of Directors does not so fix a record date, the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the Board adopts

the applicable resolution or the sixtieth (60th) day before the date of that action, whichever is later.

Section 2. Checks, Drafts and Evidences of Indebtedness. All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

Section 3. Corporate Contracts and Instruments: How Executed. The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation, and this authority may be general or confined to specific instances; and, unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 4. Certificates for Shares. A certificate or certificates for shares of the capital stock of the Corporation shall be issued to each shareholder when any of these shares are fully paid, and the Board of Directors may authorize the issuance of certificates or shares as partly paid provided that these certificates shall state the amount of the consideration to be paid for them and the amount paid. All certificates shall be signed in the name of the Corporation by the Chairman of the Board or Vice Chairman of the Board or the President or Vice President and by the Chief Financial Officer or an Assistant Treasurer or the Secretary or any Assistant Secretary, certifying the number of shares and the class or series of shares owned by the shareholder. Any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed on a certificate shall have ceased to be that officer, transfer agent, or registrar before that certificate is issued, it may be issued by the Corporation with the same effect as if that person were an officer, transfer agent, or registrar at the date of issue.

Section 5. Lost Certificate. Except as provided in this Section 5, no new certificates for shares shall be issued to replace an old certificate unless the latter is surrendered to the Corporation and canceled at the same time. The Board of Directors may, in case any share certificate or certificate for any other security is lost, stolen, or destroyed, authorize the issuance of a replacement certificate on such terms and conditions as the Board may require, including provision for indemnification of the Corporation secured by a bond or other adequate security sufficient to protect the Corporation against any claim that may be made

against it, including any expense or liability, on account of the alleged loss, theft, or destruction of the certificate or the issuance of the replacement certificate.

Section 6. Representation of Shares of Other Corporations. The Chairman of the Board, the President, or any Vice President, or any other person authorized by resolution of the Board of Directors or by any of the foregoing designated officers, is authorized to vote on behalf of the Corporation any and all shares of any other corporation or corporations, foreign or domestic, standing in the name of the Corporation. The authority granted to these officers to vote or represent on behalf of the Corporation any and all shares held by the Corporation in any other corporation or corporations may be exercised by any of these officers in person or by any person authorized to do so by a proxy duly executed by these officers.

Section 7. Construction and Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California General Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

## ARTICLE IX

### AMENDMENTS

Section 1. Amendment by Shareholders. New Bylaws may be adopted or these Bylaws may be amended or repealed by the vote or written consent of holders of a majority the outstanding shares entitled to vote; provided, however, that if the Articles of Incorporation of the Corporation set forth the number of authorized Directors of the Corporation, the authorized number of Directors may be changed only by an amendment of the Articles of Incorporation.

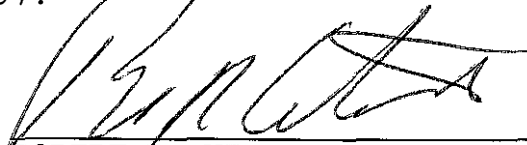
Section 2. Amendment by Directors. Subject to the rights of the shareholders as provided in Section 1 of this Article IX, to adopt, amend, or repeal Bylaws, Bylaws may be adopted, amended or repealed by the Board of Directors.

CERTIFICATE OF SECRETARY

The undersigned certifies:

(1) That the undersigned is the duly elected and acting Secretary of AFX WHEELS, INC., a California corporation; and

(2) That the foregoing Bylaws constitute the Bylaws of said Corporation as duly adopted by the Board of Directors on the 15th day of May, 1997.



ROBERT H. WINTERS, SR.  
Secretary

# Exhibit C-3



MINUTES OF ACTION OF BOARD OF DIRECTORS OF

AFX WHEELS, INC.

A California Corporation

TAKEN BY UNANIMOUS WRITTEN CONSENT WITHOUT MEETING

The undersigned, being the Directors of AFX WHEELS, INC., a California corporation (the "Corporation"), acting by unanimous written consent without a meeting pursuant to Section 307(b) of the California Corporations Code and the Bylaws of the Corporation, consent to their election as members of the Board of Directors of the Corporation, accepts the resignation of John G. Cruz, and adopts the following resolutions:

1. Corporate Records.

RESOLVED, that the Corporation shall maintain as part of its records, a book entitled "Minute Book" which shall include its Articles of Incorporation and any amendments thereto, its Bylaws and any amendments thereto, minutes of all proceedings of its Board of Directors, and proceedings of all meetings of its shareholders.

RESOLVED, FURTHER, that the Secretary of the Corporation is directed to procure each Minute Book and such other books and records as may be required by the Corporation.

RESOLVED, FURTHER, that the Minute Book(s) of the Corporation, including the original Articles, Bylaws, and minutes of proceedings of Shareholders and the Board of Directors, and any committee or committees of the Board of Directors, shall be kept at the Corporation's office.

2. Articles.

RESOLVED, that the contents of the Articles of Incorporation of the Corporation, an original of which has been inserted by the incorporator in the Minute Book of the Corporation and bears the file stamp and certification of the California Secretary of State indicating that it was filed on January 31, 1996, are hereby accepted and ratified by the Directors.

3. Bylaws.

RESOLVED, that the contents of a document consisting of 20 pages and entitled "BYLAWS OF AFX WHEELS, INC." are hereby adopted as the Bylaws of the Corporation and that the Secretary of the Corporation is directed to certify a copy of such Bylaws and insert them in the Minute Book of the Corporation; the Secretary is also to certify a copy of such Bylaws to be

maintained at the principal office of the Corporation to be available for inspection by any member of the Board of Directors at reasonable times during office hours.

4. Seal.

RESOLVED, that a corporate seal consisting of two (2) concentric circles enclosing the words "AFX WHEELS, INC." and in the center of such circles the words "Incorporated" and "California," together with the date of incorporation of the Corporation, is adopted as the corporate seal.

5. Principal Office.

RESOLVED, that the principal office of the Corporation shall be established and maintained at 1818 East Rosslyn Avenue, Fullerton, CA 92831, and shall be so located until changed by the Board of Directors.

6. Officers.

RESOLVED, that the following person is elected, to serve at the pleasure of the board, as the officer of the Corporation in the capacities set forth opposite his name:

<u>Name</u>	<u>Office</u>
Robert H. Winters, Sr.	President/Secretary/Treasurer

RESOLVED, FURTHER, that for purposes of giving any reports or executing any documents requiring the signature of the "Treasurer," the Chief Financial Officer is also deemed to be the Treasurer of this corporation.

7. Compensation of Directors.

RESOLVED, that members of the Board of Directors of the Corporation shall not be compensated for the performance of their duties as such.

8. Share Certificates.

RESOLVED, that certificates representing shares of capital stock of the Corporation shall bear the name of the Corporation, the number of shares represented thereby, the name of the owner of such shares, and the date(s), if any, on which such shares have been transferred on the books of the Corporation.

RESOLVED, FURTHER, that such share certificates shall be consecutively numbered beginning with No. 1; shall be issued only when the signatures of the President and Secretary and the

corporate seal are affixed thereto; and may also bear other wording related to the ownership, issuance, and transferability of the shares represented thereby.

9. Licenses.

RESOLVED, that the President of the Corporation is directed to obtain in the name of the Corporation such licenses and tax permits as may be required for the conduct of the business of the Corporation by any federal, state, county, or municipal governmental ordinance or regulation, and to do all things necessary or convenient to qualify the Corporation to transact its business in compliance with the laws and regulations of any federal, state, county, or municipal governmental authority.

10. Reimbursement of Expenses.

RESOLVED, that any payments made to an officer of the Corporation, such as salary, commission, bonus, interest, rent, or other expense incurred by him which shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service or the California Franchise Tax Board shall be reimbursed by such officer to the Corporation to the full extent of such disallowance. It shall be the duty of the Directors, as a Board, to enforce payment of each amount disallowed. In lieu of payment by the officer, subject to determination of the Directors, proportionate amounts may be withheld from his future compensation payments until the amount owed to the Corporation has been recovered.

11. Issuance of 1244 Stock.

RESOLVED that to the extent available the Corporation intends to qualify its common stock for treatment under Internal Revenue Code section 1244, under which the corporation plans that its total equity capital and paid-in surplus shall in no event exceed \$1 million, that it shall be largely an operating company, with less than 50 percent of its gross receipts coming from passive sources (royalties, rents, dividends, interest, annuities, and sales or exchanges of stocks or securities), and that it shall conform in all other respects to the requirements necessary to qualify its common stock for treatment under Internal Revenue Code Section 1244.

RESOLVED, FURTHER, that the secretary of the Corporation is authorized and directed to keep all records, prepare all reports and returns, and take all other steps as may be necessary to qualify the Corporation's common stock for treatment under Internal Revenue Code Section 1244 and the California Revenue and Taxation Code, Sections 18206-18210, as amended to enable ordinary loss treatment if the Corporation's stock becomes worthless.

12. Issuance of Shares.

RESOLVED, that the Corporation issue and sell a total of Two Hundred Thousand shares of its authorized common stock to the following persons, in the number and for the

consideration set forth opposite their names, respectively: Robert H. Winters, Sr. , One Thousand (1,000) shares for the sum of \$100,000.00; and Peter Gilbert, One Thousand (1,000) shares for the sum of \$100,000.00.

RESOLVED, FURTHER, that the officers of the Corporation are authorized and directed to take all actions that may be necessary and proper for the Corporation to issue and sell the above-listed shares to the persons named, in accordance with applicable laws, and that those actions shall include, when necessary:

(a) Filing with the Commissioner of Corporations an appropriate notice under Corporations Code section 25102(f) or 25102(h) or obtaining qualification of the offer and sale of such shares from the Commissioner of Corporations;

(b) Doing all acts that may be necessary under the federal securities laws and the applicable securities laws of any other state; and

(c) Doing all acts necessary to expedite these transactions or conform them to the requirements of any applicable law.

RESOLVED, FURTHER, that each officer of the Corporation is authorized and directed to execute all documents and to take any other action necessary or advisable to carry out the purposes of this resolution.

13. Accountant.

RESOLVED, that a decision regarding an accountant for the Corporation be deferred until a future meeting of the Board.

RESOLVED, FURTHER, that the Treasurer is hereby authorized, empowered and directed to procure for and at the expense of the Corporation such books and records as may be required to properly maintain the financial records of the Corporation.

14. Accounting Year.

RESOLVED, that the accounting year for the Corporation shall end on December 31.

15. Bank Accounts.

RESOLVED, that the President or Treasurer of the Corporation is hereby authorized, empowered and directed to select and designate one or more federally or stated chartered banks, savings banks or saving and loans as a depository of funds of the Corporation, and that one or more checking accounts, and such other accounts as the Treasurer may deem necessary, be established and maintained by and in the name of the Corporation at such branch office(s) of said depository as the

Treasurer deems necessary, on and subject to such terms and conditions as the Treasurer of the Corporation may from time to time agree on with said depository;

RESOLVED, FURTHER, that all checks, drafts, and other instruments for the payment of money drawn or accepted by the Corporation for payment from such account(s) or at such office(s) of the depository be signed on behalf of the Corporation by any person(s) designated by the President or Treasurer to do so.

RESOLVED, FURTHER, that all checks, drafts, and other instruments for payment of money endorsed on behalf of the Corporation for deposit with or collection by said depository, may be so endorsed in the name of the Corporation by written or stamped endorsement, without designation or signature of the person making such endorsement;

RESOLVED, FURTHER, that the Secretary of the Corporation is hereby authorized and directed to certify to said depository that these resolutions have been duly adopted, and are in conformity with the Articles of Incorporation and Bylaws of the Corporation and to further certify to said depository the names and specimen signatures of the present officers of the Corporation authorized to sign on such account and, if and when any change be made in the personnel of such officers, the fact of such change and the name and specimen signature of each new officer; and

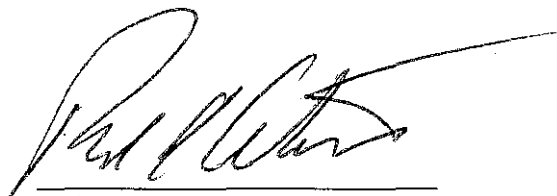
RESOLVED, FURTHER, that these resolutions and each certification herein provided for shall remain in full force and effect, and said depository is authorized and requested to rely and act thereon until it shall receive at its office to which the certified copy of these resolutions is delivered, either a certified copy of further resolution of the Board of Directors amending or rescinding these resolutions or a further certification of the names and signatures of the officers authorized to sign on such account.

16. Organizational Matters.

RESOLVED, that the Treasurer is authorized and directed to pay the expenses of incorporation and organization and to reimburse the persons advancing funds to the corporation for this purpose.

I, the sole member of the Board of Directors of AFX WHEELS, INC., hereby approve and adopt the foregoing preambles and resolutions.

Dated: May 15, 1997



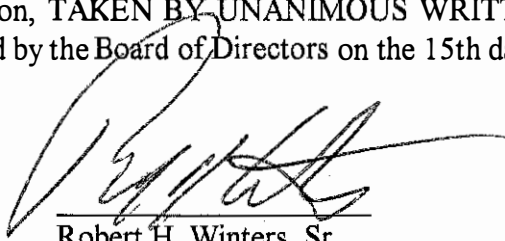
Robert H. Winters, Sr.  
Director

## CERTIFICATE OF SECRETARY

The undersigned certifies:

- (1) That the undersigned is the duly elected and acting Secretary of AFX WHEELS, INC., a California corporation; and
- (2) That the foregoing MINUTES OF ACTION OF BOARD OF DIRECTORS OF AFX WHEELS, INC., a California Corporation, TAKEN BY UNANIMOUS WRITTEN CONSENT WITHO T MEETING were duly adopted by the Board of Directors on the 15th day of May, 1997.

Dated: May 15, 1997



Robert H. Winters, Sr.,  
Secretary

MINUTES OF ACTION OF BOARD OF DIRECTORS OF

AFX WHEELS, INC.

A California Corporation

TAKEN BY UNANIMOUS WRITTEN CONSENT WITHOUT MEETING

The undersigned, being the entire Board of Directors of AFX WHEELS, INC., a California corporation (the "Corporation"), acting by unanimous written consent without a meeting pursuant to Section 307(b) of the California Corporations Code and the Bylaws of the Corporation, states as follows and adopts the following resolutions:

Purchase of Stock of PCA Metal Finishing, Inc.

WHEREAS, the Board of Directors of the Corporation believes it to be in the best interests of the Corporation to ratify the purchase by the Corporation from PCA Aero-space, Inc., a California corporation ("Seller"), of the issued and outstanding capital stock (the "Stock") of PCA Metal Finishing, Inc., a California corporation (the "Company"), pursuant to and in accordance with the terms of that certain Stock Purchase Agreement (the "Agreement") entered into as April 30, 1997, and by and among the Corporation, Seller and the Company, and to ratify all actions taken by the President of the Corporation which he has taken in connection therewith.

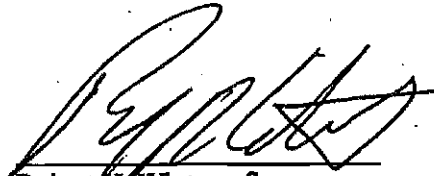
RESOLVED, that all prior actions taken by the President of the Corporation on behalf of the Corporation to enter into, perform and consummate the transaction contemplated by the Agreement are hereby approved and ratified, and the President of the Corporation is hereby authorized, directed and empowered to take any and all future action under the Agreement for or on behalf of the Corporation as he deems necessary, reasonable or proper in furtherance of the terms of the Agreement or otherwise in connection with acquisition of the Stock from Seller.

RESOLVED, FURTHER, that the Secretary of the Corporation is hereby authorized and directed to certify that these resolutions have been duly adopted, and are in conformity with the Articles of Incorporation.

RESOLVED, FURTHER, that these resolutions and each certification herein provided for shall remain in full force and effect, and said person(s) are authorized and requested to rely and act thereon until such person(s) shall receive at its office to which the original certified copy of these resolutions is delivered a certified copy of further resolution of the Board of Directors amending or rescinding these resolutions.

I, who constitute the entire Board of Directors of AFX WHEELS, INC., hereby approve and adopt the foregoing preambles and resolutions.

Dated: May 15, 1997



Robert H. Winters, Sr.  
Director



# Exhibit C-4

10618752

# 1900348  
CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION

FILED  
In the office of the Secretary of State  
of the State of California

DEC 31 1998

*Bill Jones*  
BILL JONES, Secretary of State

The undersigned certifies that:

1. He is the president and secretary, AFX Wheels, Inc., a California corporation.
2. Article I of the Articles of Incorporation is amended to read as follows:  

"The name of this Corporation is PCA Industries."
3. The foregoing amendment of Articles of Incorporation has been duly approved by the board of directors.
4. The foregoing Amendment of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares of the corporation is 2,000. The number of shares voting in favor of the amendment equals or exceeds the vote required. The percentage vote required was more than fifty-percent (50%).

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

DATE: December 15, 1998

*Robert H. Winters*  
Robert H. Winters,  
President and Secretary

WINEPA001298

# Exhibit C-5



# State of California

Bill Jones  
Secretary of State

P.O. Box 41489  
Sacramento, CA 95844-2200  
Phone (916) 937-3537

00-084899

## STATEMENT BY DOMESTIC STOCK CORPORATION

THIS STATEMENT MUST BE FILED WITH CALIFORNIA SECRETARY OF STATE (REG. 1802, CON/CONTING CODES)

WHEN COMPLETING FORM, PLEASE USE BLACK TYPEWRITER PAPER OR PRINT IN BLACK INK

FILED  
SACRAMENTO, CALIF

MAR -8 700

Bill Jones  
SECRETARY OF STATE

1. DO NOT ALTER PREPRINTED NAME. IF ITEM 1 IS BLANK, PLEASE ENTER CORPORATE NAME AND NUMBER

C1900348 DUE DATE 01-31-00 30462S  
PCA INDUSTRIES  
1818 E. ROSSLYNN AVE  
FULLERTON, CA 92831

If There Has Been No Change In Any Of The Information On File, Complete Item 1a Only  
Please Indicate on return envelope if no change statement is enclosed.

DO NOT MARK IN THIS SPACE

1A. I DECLARE THERE HAS BEEN NO CHANGE IN THE INFORMATION CONTAINED IN THE LAST STATEMENT OF THE CORPORATION WHICH IS ON FILE IN THE SECRETARY OF STATE'S OFFICE (DOES NOT APPLY ON INITIAL FILING)



CHECK HERE	TYPE OR PRINT NAME OF SIGNING OFFICER OR AGENT	SIGNATURE	TITLE	DATE
2	STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	ROOM NO.	2A. CITY AND STATE	2B. ZIP CODE
	1818 E. ROSSLYNN AVENUE		FULLERTON, CA.	92831
3	STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA (IF ANY)	ROOM NO.	3A. CITY	3B. ZIP CODE
			CA	
4	MAILING ADDRESS	ROOM NO.	4A. CITY AND STATE	4B. ZIP CODE
	1818 E. ROSSLYNN AVENUE		FULLERTON, CA.	92831

5. CHIEF EXECUTIVE OFFICER/	5A. STREET ADDRESS (DO NOT USE P.O. BOX)	5B. CITY AND STATE	5C. ZIP CODE
ROBERT H. WINTERS	1818 E. ROSSLYNN AVE.	FULLERTON, CA.	92831
6. SECRETARY/	6A. STREET ADDRESS (DO NOT USE P.O. BOX)	6B. CITY AND STATE	6C. ZIP CODE
PETER GILBERT	610 WEST END STREET	NEW YORK, NY	10024
7. CHIEF FINANCIAL OFFICER/	7A. STREET ADDRESS (DO NOT USE P.O. BOX)	7B. CITY AND STATE	7C. ZIP CODE
PETER GILBERT	610 WEST END STREET	NEW YORK, NY	10024

8. NAME	8A. STREET ADDRESS (DO NOT USE P.O. BOX)	8B. CITY AND STATE	8C. ZIP CODE
PETER GILBERT	610 WEST END STREET	NEW YORK, NY	10024
9. NAME	9A. STREET ADDRESS (DO NOT USE P.O. BOX)	9B. CITY AND STATE	9C. ZIP CODE
ROBERT H. WINTERS	1818 E. ROSSLYNN AVENUE	FULLERTON, CA.	92831
10. NAME	10A. STREET ADDRESS (DO NOT USE P.O. BOX)	10B. CITY AND STATE	10C. ZIP CODE
ANTHONY REZZUTI	8456 SAN CLEMENTE WAY	BUENA PARK CA.	90620

11. THE NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY.

DESIGNATED AGENT FOR SERVICE OF PROCESS

12. NAME	13. CALIFORNIA STREET ADDRESS IF AGENT IS AN INDIVIDUAL (do not use P.O. box) Do not include address if agent is a corporation that has filed a certificate pursuant to Section 1505 Corporate Code
ROBERT H. WINTERS	1818 E. ROSSLYNN AVENUE FULLERTON, CA. 92831

DESCRIBE TYPE OF BUSINESS OF THE CORPORATION AS LISTED IN ITEM 1

14. TYPE OF BUSINESS
WHEEL MANUFACTURE

15. I DECLARE THAT I HAVE EXAMINED THIS STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT AND COMPLETE.			
<u>ROBERT H. WINTERS</u>	<u></u>	<u>PRESIDENT</u>	<u>03/06/00</u>
TYPE OR PRINT NAME OF SIGNING OFFICER OR AGENT	ORIGINAL SIGNATURE	TITLE	DATE

# Exhibit C-6



State of California  
Bill Jones  
Secretary of State

STATEMENT BY DOMESTIC STOCK CORPORATION

1. DO NOT ALTER PREPRINTED NAME. IF ITEM 1 IS BLANK, PLEASE ENTER CORPORATE NAME AND NUMBER.

C1900348 DUE DATE 01-31-01 33293S  
PCA INDUSTRIES  
1818 E ROSSLYNN AVE  
FULLERTON, CA 92831

FILED  
In the Office of the Secretary of State  
of the State of California

MAR 30 2001

*Bill Jones*  
BILL JONES, Secretary of State

This Space For Filing Uses Only

2. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE CITY AND STATE ZIP CODE

3. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY CITY ZIP CODE

4. MAILING ADDRESS CITY AND STATE CA ZIP CODE

5. CHIEF EXECUTIVE OFFICER/ ADDRESS CITY AND STATE ZIP CODE

6. SECRETARY/ ADDRESS CITY AND STATE ZIP CODE

7. CHIEF FINANCIAL OFFICER/ ADDRESS CITY AND STATE ZIP CODE

8. NAME ADDRESS CITY AND STATE ZIP CODE

9. NAME ADDRESS CITY AND STATE ZIP CODE

10. NAME ADDRESS CITY AND STATE ZIP CODE

11. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

12. CHECK THE APPROPRIATE PROVISION BELOW AND NAME THE AGENT FOR SERVICE OF PROCESS:

AN INDIVIDUAL RESIDING IN CALIFORNIA

A CORPORATION WHICH HAS FILED A CERTIFICATE PURSUANT TO SECTION 1305 OF THE CALIF.

CORPORATIONS CODE.

AGENT'S NAME:

13. ADDRESS OF THE AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY ZIP CODE

14. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION

15. I DECLARE THAT I HAVE EXAMINED THIS STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT AND COMPLETE.

*ROBERT H. WINTERS*  
TYPE OR PRINT NAME OF SIGNING OFFICER OR AGENT

*[Signature]*  
ORIGINAL SIGNATURE

*PRESIDENT*  
TITLE

*12/13/00*  
DATE

50-205 MC (REV. 1/89)

Approved by Secretary of State

WINEPA001302

# Exhibit C-7

1900348

00655544

CERTIFICATE OF DISSOLUTION  
OF  
PCA INDUSTRIES

FILED JG A  
In the Office of the Secretary of State  
of the State of California

AUG 14 2001

*Bill Jones*  
BILL JONES, Secretary of State

Robert H. Winters, Sr., hereby certifies that:

1. He is the sole director now in office of PCA INDUSTRIES, a California corporation.
2. The corporation has been completely wound up.
3. The corporation's known debts and liabilities have been adequately provided for by their assumption by Pacific Coast Alloy, LLC, whose address is 1818 E. Rossllyn Avenue, Fullerton, CA 92831.
4. The corporation's known assets have been distributed to the persons entitled thereto.
5. A person or corporation assumes the tax liability, if any, of the dissolving corporation as security for the issuance of a tax clearance certificate from the Franchise Tax Board and is responsible for additional corporate taxes, if any, that are assessed and that become due after the date of the assumption of the tax liability.
6. The election to dissolve was made by the vote of all the outstanding shares.
7. The corporation is dissolved.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Date: July 16, 2001

*Robert H. Winters, Sr.*  
Robert Winters, Sr., Director

WINEPA001304



# Exhibit C-8

**State of California**  
**Secretary of State**

**CERTIFICATE OF STATUS**

**ENTITY NAME:**

PCA INDUSTRIES

FILE NUMBER: C1900348  
FORMATION DATE: 01/31/1996  
TYPE: DOMESTIC CORPORATION  
JURISDICTION: CALIFORNIA  
STATUS: DISSOLVED

I, ALEX PADILLA, Secretary of State of the State of California,  
hereby certify:

The records of this office indicate the entity filed a Certificate  
of Dissolution on August 14, 2001, and the entity's powers, rights  
and privileges have ceased.



IN WITNESS WHEREOF, I execute this certificate  
and affix the Great Seal of the State of  
California this day of December 09, 2015.

ALEX PADILLA  
Secretary of State

# Exhibit D

# Exhibit D-1



STATE OF CALIFORNIA  
ACTING SECRETARY OF STATE  
TONY MILLER

LIMITED LIABILITY COMPANY  
ARTICLES OF ORGANIZATION

**IMPORTANT** - Read instructions before completing the form.

This document is presented for filing pursuant to Section 17050 of the California Corporations Code.

1. Limited liability company name:

**PCA Alloy LLC**

(End the name with "LLC" or "Limited Liability Company". No periods between the words "LLC", "Limited" and "Company" may be abbreviated to "Ltd." and "Co.")

2. Latest date on which the limited liability company is to dissolve:

**December 31, 2027**

3. The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the Beverly-Killea Limited Liability Company Act.

4. Enter the name of initial agent for service of process and check the appropriate provision below:

**Robert B. Winters, Sr.**

which is

☒ an individual residing in California. Proceed to Item 5.

☐ a corporation which has filed a certificate pursuant to Section 1505 of the California Corporations Code. Skip Item 5 and proceed to Item 6.

5. If the initial agent for service of process is an individual, enter a business or residential street address in California:

Street address: **1818 East Rosslynn Avenue**

City **Fullerton**

State **CALIFORNIA**

Zip Code: **92831**

6. The limited liability company will be managed by: (check one)

☐ one manager

☐ more than one manager

☒ limited liability company members

7. If other matters are to be included in the articles of organization attach one or more separate pages.

Number of pages attached, if any: **N/A**

8. It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

Signature of organizer

**John G. Cruz**

Type or print name of organizer

Date **December 29**, 19 **97**

For Secretary of State Use

**101997364026**

**FILED**

In the office of the Secretary of State  
of the State of California

**DEC 30 1997**

**Bill Jones**

**BILL JONES, Secretary of State**

# Exhibit D-2

## OPERATING AGREEMENT

FOR

### PCA ALLOY LLC A CALIFORNIA LIMITED LIABILITY COMPANY

This Operating Agreement is made as of December 29, 1997, by and among the parties listed on the signature pages hereof, with reference to the following facts:

A. On December 30, 1997, Articles of Organization for PCA Alloy LLC (the "Company"), a limited liability company under the laws of the State of California, were filed with the California Secretary of State.

B. The parties desire to adopt and approve an operating agreement for the Company.

NOW, THEREFORE, the parties (hereinafter sometimes collectively referred to as the "Members," or individually as the "Member") by this Agreement set forth the operating agreement for the Company under the laws of the State of California upon the terms and subject to the conditions of this Agreement.

## ARTICLE I

### DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below (all terms used in this Agreement that are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement):

1.1 "Act" shall mean the Beverly-Killea Limited Liability Company Act, codified in the California Corporations Code, Section 17000 et seq., as the same may be amended from time to time.

1.2 "Affiliate" shall mean any individual, partnership, corporation, trust or other entity or association, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Member. The term "control," as used in the immediately preceding sentence, means, with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause

the direction of the management or policies of the controlled entity.

1.3 "Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.

1.4 "Articles" shall mean the Articles of Organization for the Company originally filed with the California Secretary of State and as amended from time to time.

1.5 "Bankruptcy" shall mean: (a) the filing of an application by a Member for, or his or her consent to, the appointment of a trustee, receiver, or custodian of his or her other assets; (b) the entry of an order for relief with respect to a Member in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the making by a Member of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of a Member unless the proceedings and the person appointed are dismissed within ninety (90) days; or (e) the failure by a Member generally to pay his or her debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of his or her inability to pay his or her debts as they become due.

1.6 "Capital Account" shall mean with respect to any Member the capital account which the Company establishes and maintains for such Member pursuant to Section 3.3.

1.7 "Capital Contribution" shall mean the total value of cash and fair market value of property (including promissory notes or other obligation to contribute cash or property) contributed and/or services rendered or to be rendered to the Company by Members.

1.8 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law, and to the extent applicable, the Regulations.

1.9 "Company" shall mean PCA Alloy LLC, a California limited liability company.

1.10 "Company Minimum Gain" shall have the meaning ascribed to the term "Partnership Minimum Gain" in the Regulations Section 1.704-2(d).

1.11 "Corporations Code" shall mean the California Corporations Code, as amended from time to time, and the provisions of succeeding law.

1.12 "Dissolution Event" shall mean with respect to any Member one or more of the following: the death, insanity, withdrawal, resignation, expulsion, Bankruptcy, dissolution or



occurrence of any other event which terminates the continued membership of any Member unless the other Members consent to continue the business of the Company pursuant to Section 8.1.

1.13 "Distributable Cash" shall mean the amount of cash which the Managers deem available for distribution to the Members, taking into account all Company debts, liabilities, and obligations of the Company then due and amounts which the Managers deem necessary to place into reserves for customary and usual claims with respect to the Company's business.

1.14 "Economic Interest" shall mean a Member's or Economic Interest Owner's share of one or more of the Company's Net Profits, Net Losses, and distributions of the Company's assets pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management, or except as provided in Section 17106 of the Corporations Code, any right to information concerning the business and affairs of Company.

1.15 "Economic Interest Owner" shall mean the owner of an Economic Interest who is not a Member.

1.16 "Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year.

1.17 "Former Member" shall have the meaning ascribed to it in Section 8.1.

1.18 "Former Member's Interest" shall have the meaning ascribed to it in Section 8.1.

1.19 "Majority Interest" shall mean one or more Percentage Interests of Members which taken together exceed fifty percent (50%) of the aggregate of all Percentage Interests.

1.20 "Manager" shall mean one or more managers. Specifically, "Manager" shall mean Philip Friedrich, Peter Gilbert, Tony Rezzuti, Steven P. Kelley and Robert H. Winters, or any other persons that succeed any of them in that capacity.

1.21 "Member" shall mean each Person who (a) is an initial signatory to this Agreement, has been admitted to the Company as a Member in accordance with the Articles or this Agreement or is an assignee who has become a Member in accordance with Article VII and (b) has not resigned, withdrawn, been expelled or, if other than an individual, dissolved.

1.22 "Member Nonrecourse Debt" shall have the meaning ascribed to the term "Partner Nonrecourse Debt" in Regulations Section 1.704-2(b)(4).

1.23 "Member Nonrecourse Deductions" shall mean items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt.

1.24 "Membership Interest" shall mean a Member's entire interest in the Company including the Member's Economic Interest, the right to vote on or participate in the management, and the right to receive information concerning the business and affairs, of the Company.

1.25 "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions, and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with generally accepted accounting principles employed under the method of accounting at the close of each fiscal year on the Company's information tax return filed for federal income tax purposes.

1.26 "Nonrecourse Liability" shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

1.27 "Percentage Interest" shall mean the percentage of a Member set forth opposite the name of such Member under the column "Member's Percentage Interest" in Exhibit A hereto, as such percentage may be adjusted from time to time pursuant to the terms of this Agreement. Percentage Interests shall be determined annually, unless otherwise provided herein, in accordance with the relative proportions of the Capital Accounts of the Members, effective as of the first day of the Company's Fiscal Year but with all distributions under this Agreement to be deemed to have occurred on such day immediately prior to determination of the Percentage Interest of a Member.

1.28 "Person" shall mean an individual, general partnership, limited partnership, limited liability company, corporation, trust, estate, real estate investment trust association or any other entity.

1.29 "Regulations" shall, unless the context clearly indicates otherwise, mean the regulations currently in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code.

1.30 "Remaining Members" shall have the meaning ascribed to it in Section 8.1.

1.31 "Tax Matters Partner" shall be Robert H. Winters or his or her successor as designated pursuant to Section 9.8.

## ARTICLE II

### ORGANIZATIONAL MATTERS

2.1 Formation. Pursuant to the Act, the Members have formed a California limited liability company under the laws of the State of California by filing the Articles with the California Secretary of State and entering into this Agreement. The rights and liabilities of the Members shall be determined pursuant to the

Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

2.2 Name. The name of the Company shall be "PCA Alloy LLC." The business of the Company may be conducted under that name or, upon compliance with applicable laws, any other name that the Managers deem appropriate or advisable. The Managers shall file any fictitious name certificates and similar filings, and any amendments thereto, that the Managers consider appropriate or advisable.

2.3 Term. The term of this Agreement shall be co-terminus with the period of duration of the Company provided in the Articles, unless extended or sooner terminated as hereinafter provided.

2.4 Office and Agent. The Company shall continuously maintain an office and registered agent in the State of California as required by the Act. The principal office of the Company shall be as the Managers may determine. The Company also may have such offices, anywhere within and without the State of California, as the Managers from time to time may determine, or the business of the Company may require. The registered agent shall be as stated in the Articles or as otherwise determined by the Managers.

2.5 Addresses of the Members and the Managers. The respective addresses of the Members and the Managers are set forth on Exhibit A.

2.6 Purpose of Company. The purpose of the Company is to engage in any lawful activity for which a limited liability company may be organized under the Act. Notwithstanding the foregoing, without the consent of the Members, the Company shall not engage in any business other than the following:

A. the business of manufacture and sale of custom aluminum wheels and related matters;

B. the purchase of any real or personal property, make any investment, and engage in any joint venture, general partnership, limited partnership, or other business activity proposed by the Managers and not prohibited by law or this Agreement; and

C. such other activities directly related to the foregoing business as may be necessary, advisable, or appropriate, in the reasonable opinion of the Managers to further the foregoing business.

## ARTICLE III

### CAPITAL CONTRIBUTIONS

3.1 Initial Capital Contributions. Each Member shall contribute such amount as is set forth on Exhibit A as his or her initial Capital Contribution, which Exhibit A shall be revised to reflect any additional contributions contributed in accordance with Section 3.2.

3.2 Additional Capital Contributions. No Member shall be required to make any additional Capital Contributions. To the extent unanimously approved by the Managers and Members who hold a Majority Interest, from time to time, the Members may be permitted to make additional Capital Contributions if and to the extent they so desire, and if the Managers determine that such additional Capital Contributions are necessary or appropriate for the conduct of the Company's business, including without limitation, expansion or diversification. In that event, the Members shall have the opportunity, but not the obligation, to participate in such additional Capital Contributions on a pro rata basis in accordance with their Percentage Interests. Immediately following such Capital Contributions, the Percentage Interests shall be adjusted by the Managers to reflect the new relative proportions of the Capital Accounts of the Members.

3.3 Capital Accounts. The Company shall establish an individual Capital Account for each Member. The Company shall determine and maintain each Capital Account in accordance with Regulations Section 1.704-1(b)(2)(iv). If a Member transfers all or a part of his or her Membership Interest in accordance with this Agreement, such Member's Capital Account attributable to the transferred Membership Interest shall carry over to the new owner of such Membership Interest pursuant to Regulations Section 1.704-1(b)(2)(iv)(1).

3.4 No Interest. No Member shall be entitled to receive any interest on his or her Capital Contributions.

3.5 Failure to Make Contributions. If a Member does not timely contribute capital when required, that Member shall be in default under this Agreement. In such event, the Managers shall send the defaulting Member written notice of such default, giving him or her fourteen (14) days from the date such notice is given to contribute the entire amount of his or her required capital contribution. If the defaulting Member does not contribute his or her required capital to the Company within said fourteen (14)-day period, the Managers or those non-defaulting Members who hold a majority of the Percentage Interests held by all non-defaulting Members may elect any one or more of the following remedies:

A. The non-defaulting Members may advance funds to the Company to cover those amounts which the defaulting Member fails to contribute. Amounts which a non-defaulting Member so advances on behalf of the defaulting Member shall become a loan due

and owing from the defaulting Member to such non-defaulting Member and bear interest at the rate of ten percent (10%) per annum, payable monthly. All cash distributions otherwise distributable to the defaulting Member under this Agreement shall instead be paid to the non-defaulting Members making such advances until such advances and interest thereon are paid in full. In any event, any such advances shall be evidenced by a promissory note in the form of Exhibit B and be due and payable by the defaulting Member one (1) year from the date that such advance was made. Any amounts repaid shall first be applied to interest and thereafter to principal. Effective upon a Member becoming a defaulting Member, each Member grants to the nondefaulting Members who advance funds under this Section 3.5A a security interest in his or her Economic Interest to secure his or her obligation to repay such advances and agrees to execute and deliver a promissory note as described herein together with a security agreement in the form of Exhibit C and such UCC-1 financing statements and assignments of certificates of membership (or other documents of transfer) as such non-defaulting Members may reasonably request.

B. The Percentage Interests shall be adjusted, in which event each Member's Percentage Interest shall be a fraction, the numerator of which represents the amount of such Member's Capital Account and the denominator of which represents the sum of all Members' Capital Accounts.

C. The non-defaulting Members who hold a majority of the Percentage Interests held by all non-defaulting Members may dissolve the Company, in which event the Company shall be wound-up, liquidated and terminated pursuant to Article X.

D. The Company or the non-defaulting Members may purchase the defaulting Member's entire Membership Interest in accordance with the same terms and conditions as those set forth in Article VIII except that the purchase price shall be an amount equal to eighty percent (80%) of the purchase price determined in accordance with Section 8.3.

E. The defaulting Members shall have no right to receive any distributions from the Company until the non-defaulting Members have first received distributions in an amount equal to the additional capital contributed by each non-defaulting Member to the Company plus a cumulative, non-compounded return thereon at the rate of ten percent (10%) per annum.

F. The defaulting Member shall lose his or her voting and approval rights under the Act, the Articles and this Agreement until such time as the defaulting Member cures the default.

G. The defaulting Member shall lose his or her ability (whether as a Member or a Manager) to actively participate in the management and operations of the Company until such time as the defaulting Member cures the default.

H. If the defaulting Member does not make a required contribution of property or services, the Company may require the defaulting Member to contribute cash equal to that portion of the fair market value of the contribution that has not been made. This remedy is in addition to, and not in lieu of any other rights, including the right to specific performance, the remedies listed above in this Section 3.5, or any other rights of the Company or its Members under applicable law.

Each Member acknowledges and agrees that the remedies described in this Section 3.5 bear a reasonable relationship to the damages which the Members estimate may be suffered by the Company and the non-defaulting Members by reason of the failure of a defaulting Member to make an additional Capital Contribution and the election of any or all of the above described remedies is not unreasonable under the circumstances existing as of the date hereof.

The election of the Managers or non-defaulting Members, as applicable, to pursue any remedy provided in this Section 3.5 shall not be a waiver or limitation of the right to pursue an additional or different remedy available hereunder or of law or equity with respect to any subsequent default.

## ARTICLE IV

### MEMBERS

4.1 Limited Liability. Except as required under the Act or as expressly set forth in this Agreement, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise.

4.2 Admission of Additional Members. The Managers, with the approval of the Members, may admit to the Company additional Members. Any additional Members shall obtain Membership Interests and will participate in the management, Net Profits, Net Losses, and distributions of the Company on such terms as are determined by the Managers and approved by the Members. Notwithstanding the foregoing, substitute members may only be admitted in accordance with Article VII.

4.3 Withdrawals or Resignations. Any Member who is under an obligation to render services to the Company may withdraw or resign as a Member at any time upon 120 days prior written notice to the Company, without prejudice to the rights, if any, of the Company or the other Members under any contract to which the withdrawing Member is a party. Such Member's Membership Interest shall be subject to purchase the sale as provided in Section 8.2. No other Member may withdraw or resign from the Company.

4.4 Termination of Membership Interest. Upon the transfer of a Member's Membership Interest in violation of this

Agreement, the occurrence of a Dissolution Event as to such Member which does not result in the dissolution of the Company or the withdrawal of a Member in accordance with Section 4.3, the Membership Interest of a Member shall be terminated by the Managers or such Membership Interest shall be purchased by the Company or remaining Members as provided herein. Each Member acknowledges and agrees that such termination or purchase of a Membership Interest upon the occurrence of any of the foregoing events is not unreasonable under the circumstances existing as of the date hereof.

4.5 Transactions with the Company. Subject to any limitations set forth in this Agreement and with the prior approval of the Managers after full disclosure of the Member's involvement, a Member may lend money to and transact other business with the Company. Subject to other applicable law, such Member has the same rights and obligations with respect thereto as a Person who is not a Member.

4.6 Remuneration to Members. Except as otherwise authorized in, or pursuant to, this Agreement, no Member is entitled to remuneration for acting in the Company business, subject to the entitlement of Managers or Members winding up the affairs of the Company to reasonable compensation pursuant to Section 10.3.

4.7 Members Are Not Agents. Pursuant to Section 5.1 and the Articles, the management of the Company is vested in the Managers. No Member, acting solely in the capacity of a Member, is an agent of the Company nor can any Member in such capacity bind nor execute any instrument on behalf of the Company.

4.8 Voting Rights. Except as expressly provided in this Agreement or the Articles, Members shall have no voting, approval or consent rights. Members shall have the right to approve or disapprove matters as specifically stated in this Agreement, including the following:

A. Unanimous Approval. The following matters shall require the unanimous vote, approval or consent of all Members who are not the subject of a Dissolution Event or an assignor of a Membership Interest:

(i) A decision to continue the business of the Company after the occurrence of a Dissolution Event.

(ii) Except as provided in Section 7.4, the transfer of a Membership Interest and admission of the assignee as a Member of the Company.

(iii) Any amendment of the Articles or this Agreement.

(iv) A decision to compromise the obligation of a Member to make a Capital Contribution or return money or property paid or distributed in violation of the Act.

B. Approval by Members Holding a Majority Interest. Except as set forth in Section 5.3B in all other matters in which a vote, approval or consent of the Members is required, a vote, consent or approval of Members holding a Majority Interest (or, in instances in which there are defaulting Members, non-defaulting Members who hold a majority of the Percentage Interests held by all non-defaulting Members) shall be sufficient to authorize or approve such act.

#### 4.9 Meetings of Members.

A. Date, Time and Place of Meetings of Members; Secretary. Meetings of Members may be held at such date, time and place within or without the State of California as the Managers may fix from time to time, or if there are two or more Managers and they are unable to agree to such time and place, Members holding a Majority Interest shall determine the time and place. No annual or regular meetings of Members is required. At any Members' meeting, the Managers shall appoint a person to preside at the meeting and a person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting which shall be placed in the minute books of the Company.

B. Power to Call Meetings. Unless otherwise prescribed by the Act or by the Articles, meetings of the Members may be called by any Manager, or upon written demand of Members holding more than ten percent (10%) of the Percentage Interests for the purpose of addressing any matters on which the Members may vote.

C. Notice of Meeting. Written notice of a meeting of Members shall be sent or otherwise given to each Member in accordance with Section 4.9D not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and the general nature of the business to be transacted. No other business may be transacted at this meeting. Upon written request to a Manager by any person entitled to call a meeting of Members, the Managers shall immediately cause notice to be given to the Members entitled to vote that a meeting will be held at a time requested by the person calling the meeting, not less than ten (10) days nor more than sixty (60) days after the receipt of the request. If the notice is not given within twenty (20) days after the receipt of the request, the person entitled to call the meeting may give the notice.

D. Manner of Giving Notice; Affidavit of Notice. Notice of any meeting of Members shall be given either personally or by first-class mail or telegraphic or other written communication, charges prepaid, addressed to the Member at the address of that Member appearing on the books of the Company or



given by the Member to the Company for the purpose of notice. If no such address appears on the Company's books or is given, notice shall be deemed to have been given if sent to that Member by first-class mail or telegraphic or other written communication to the Company's principal executive office, or if published at least once in a newspaper of general circulation in the county where that office is located. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by telegram or other means of written communication.

If any notice addressed to a Member at the address of that Member appearing on the books of the Company is returned to the Company by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the Member at that address, all future notices or reports shall be deemed to have been duly given without further mailing if these shall be available to the Member on written demand of the Member at the principal executive office of the Company for a period of one year from the date of the giving of the notice.

An affidavit of the mailing or other means of giving any notice of any meeting shall be executed by the Manager or any secretary, assistant secretary, or any transfer agent of the Company giving the notice, and shall be filed and maintained in the minute book of the Company.

E. Validity of Action. Any action approved at a meeting, other than by unanimous approval of those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

F. Quorum. The presence in person or by proxy of the holders of a Majority Interest shall constitute a quorum at a meeting of Members. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the loss of a quorum, if any action taken after loss of a quorum (other than adjournment) is approved by at least Members holding a Majority Interest.

G. Adjourned Meeting; Notice. Any Members' meeting, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the Membership Interests represented at that meeting, either in person or by proxy, but in the absence of a quorum, no other business may be transacted at that meeting, except as provided in Section 4.9F. When any meeting of Members is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place are announced at a meeting at which the adjournment is taken, unless a new record date for the adjourned meeting is subsequently fixed, or unless the adjournment is for more than forty-five (45) days from the date set for the original meeting, in which case the Managers shall set a new record date. At any adjourned meeting the Company may transact any business which might have been transacted at the original meeting.

H. Waiver of Notice or Consent. The actions taken at any meeting of Members however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the Members entitled to vote, who was not present in person or by proxy, signs a written waiver of notice or consents to the holding of the meeting or approves the minutes of the meeting. All such waivers, consents or approvals shall be filed with the Company records or made a part of the minutes of the meeting.

Attendance of a person at a meeting shall constitute a waiver of notice of that meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting if that objection is expressly made at the meeting. Neither the business to be transacted nor the purpose of any meeting of Members need be specified in any written waiver of notice except as provided in Section 4.9E.

I. Action by Written Consent Without a Meeting. Any action that may be taken at a meeting of Members may be taken without a meeting, if a consent in writing setting forth the action so taken, is signed and delivered to the Company within sixty (60) days of the record date for that action by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to vote on that action at a meeting were present and voted. All such consents shall be filed with the Managers or the secretary, if any, of the Company and shall be maintained in the Company records. Any Member giving a written consent, or the Member's proxy holders, may revoke the consent by a writing received by the Managers or secretary, if any, of the Company before written consents of the number of votes required to authorize the proposed action have been filed.

Unless the consents of all Members entitled to vote have been solicited in writing, (i) notice of any Member approval of an amendment to the Articles or this Agreement, a dissolution of the Company, or a merger of the Company, without a meeting by less than unanimous written consent, shall be given at least ten (10) days before the consummation of the action authorized by such approval, and (ii) prompt notice shall be given of the taking of any other action approved by Members without a meeting by less than unanimous written consent, to those Members entitled to vote who have not consented in writing.

J. Telephonic Participation by Member at Meetings. Members may participate in any Members' meeting through the use of any means of conference telephones or similar communications equipment as long as all Members participating can hear one another. A Member so participating is deemed to be present in person at the meeting.

K. Record Date. In order that the Company may determine the Members of record entitled to notices of any meeting or to vote, or entitled to receive any distribution or to exercise any rights in respect of any distribution or to exercise any rights in respect of any other lawful action, a Manager, or Members representing more than ten percent (10%) of the Percentage Interests may fix, in advance, a record date, that is not more than sixty (60) days nor less than ten (10) days prior to the date of the meeting and not more than sixty (60) days prior to any other action. If no record date is fixed:

(i) The record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(ii) The record date for determining Members entitled to give consent to Company action in writing without a meeting shall be the day on which the first written consent is given.

(iii) The record date for determining Members for any other purpose shall be at the close of business on the day on which the Managers adopt the resolution relating thereto, or the 60th day prior to the date of the other action, whichever is later.

(iv) The determination of Members of record entitled to notice of or to vote at a meeting of Members shall apply to any adjournment of the meeting unless a Manager or the Members who called the meeting fix a new record date for the adjourned meeting, but the Manager or the Members who called the meeting shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

L. Proxies. Every Member entitled to vote for Managers or on any other matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the Managers or secretary, if any, of the Company. A proxy shall be deemed signed if the Member's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, electronic transmission or otherwise) by the Member or the Member's attorney in fact. A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the Member or the Member's attorney in fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it, before the vote pursuant to that proxy, by a writing delivered to the Company stating that the proxy is revoked, or by a subsequent proxy executed by, or attendance at the meeting and voting in person by, the person executing the proxy; or (ii) written notice of the death or incapacity of the maker of that proxy is received by the Company

before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Corporations Code Sections 705(e) and 705(f).

4.10      Certificate of Membership Interest.

A.    Certificate.    A Membership Interest may be represented by a certificate of membership. The exact contents of a certificate of membership may be determined by action of the Managers but shall be issued substantially in conformity with the following requirements. The certificates of membership shall be respectively numbered serially, as they are issued, shall be impressed with the Company seal or a facsimile thereof, if any, and shall be signed by the Managers or officers of the Company. Each certificate of membership shall state the name of the Company, the fact that the Company is organized under the laws of the State of California as a limited liability company, the name of the person to whom issued, the date of issue, and the Percentage Interests represented thereby. A statement of the designations, preferences, qualifications, limitations, restrictions, and special or relative rights of the Membership Interest, if any, shall be set forth in full or summarized on the face or back of the certificates which the Company shall issue, or in lieu thereof, the certificate may set forth that such a statement or summary will be furnished to any holder of a Membership Interest upon request without charge. Each certificate of membership shall be otherwise in such form as may be determined by the Managers.

B.    Cancellation of Certificate.    All certificates of membership surrendered to the Company for transfer shall be cancelled and no new certificates of membership shall be issued in lieu thereof until the former certificates for a like number of Membership Interests shall have been surrendered and cancelled, except as herein provided with respect to lost, stolen, or destroyed certificates.

C.    Replacement of Lost, Stolen, or Destroyed Certificate.    Any Member claiming that his or her certificate of membership is lost, stolen, or destroyed may make an affidavit or affirmation of that fact and request a new certificate. Upon the giving of a satisfactory indemnity to the Company as reasonably as required by the Managers, a new certificate may be issued of the same tenor and representing the same Percentage Interest of membership as was represented by the certificate alleged to be lost, stolen, or destroyed.

## ARTICLES V

### MANAGEMENT AND CONTROL OF THE COMPANY

#### 5.1 Management of the Company by Managers.

A. Exclusive Management by Managers. The business, property and affairs of the Company shall be managed exclusively by the Managers. Except for situations in which the approval of the Members is expressly required by the Articles or this Agreement, the Managers shall have full, complete and exclusive authority, power, and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, property and affairs. Robert H. Winters shall be designated as the Chief Operating Officer of the Company.

B. Agency Authority of Managers. Subject to Section 5.3B:

Any Manager, acting alone, is authorized to endorse checks, drafts, and other evidences of indebtedness made payable to the order of the Company, but only for the purpose of deposit into the Company's accounts. All checks, drafts, and other instruments obligating the Company to pay money, may be signed by any one Manager, acting alone. Only manager, Robert H. Winters, is authorized to sign contracts and obligations on behalf of the Company.

C. Meetings of Managers. Meetings of the Managers may be called by any Manager or by the chairperson, president, any vice president or the secretary. All meetings shall be held upon four (4) days notice by mail or forty-eight (48) hours notice delivered personally or by telephone, telegraph or facsimile. A notice need not specify the purpose of any meeting. Notice of a meeting need not be given to any Manager who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior to its commencement, the lack of notice to such Manager. All such waivers, consents and approvals shall be filed with the Company records or made a part of the minutes of the meeting. A majority of the Managers present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment shall be given prior to the time of the adjourned meeting to the Managers who are not present at the time of the adjournment. Meetings of the Managers may be held at any place within or without the State of California which has been designated in the notice of the meeting or at such place as may be approved by the Managers. Managers may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Managers participating in such meeting can hear one another. Participation in a meeting in such manner constitutes a presence in person at

such meeting. A majority of the authorized number of Managers constitutes a quorum of the Managers for the transaction of business. Except to the extent that this Agreement expressly requires the approval of all Managers, every act or decision done or made by a majority of the Managers present at a meeting duly held at which a quorum is present is the act of the Managers. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Managers, if any action taken is approved by at least a majority of the required quorum for such meeting. The provisions of this Section 5.1C apply also to committees of the Managers and actions taken by such committees.

Any action required or permitted to be taken by the Managers may be taken by the Managers without a meeting, if a majority of the Managers individually or collectively consent in writing to such action. Such action by written consent shall have the same force and effect as a majority vote of such Managers.

The provisions of this Section 5.1C govern meetings of the Managers if the Managers elect, in their discretion, to hold meetings. However, nothing in this Section 5.1C or in this Agreement is intended to require that meetings of Managers be held, it being the intent of the Members that meetings of Managers are not required.

## 5.2 Election of Managers.

A. Number, Term, and Qualifications. The Company shall initially have five (5) Managers. The number of Managers of the Company shall be fixed from time to time by the affirmative vote or written consent of Members holding a Majority Interest, provided that in no instance shall there be less than one Manager and provided further that if the number of Managers is reduced from more than one to one, the Articles shall be amended to so state, and if the number of Managers is increased to more than one, the Articles shall be amended to delete the statement that the Company has only one Manager. Unless he or she resigns or is removed, each Manager shall hold office until a successor shall have been elected and qualified. Managers shall be elected by the affirmative vote or written consent of Members holding a Majority Interest. A Manager need not be a Member, an individual, a resident of the State of California, or a citizen of the United States.

B. Resignation. Any Manager may resign at any time by giving written notice to the Members and remaining Managers without prejudice to the rights, if any, of the Company under any contract to which the Manager is a party. The resignation of any Manager shall take effect upon receipt of that notice or at such later time as shall be specified in the notice; and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

C. Removal. All or any lesser number of Managers may be removed at any time, with or without cause, by the affirmative vote of Members holding a Majority Interest at a meeting called expressly for that purpose, or by the written consent of the Members holding a Majority Interest. Any removal shall be without prejudice to the rights, if any, of the Manager under any employment contract and, if the Manager is also a Member, shall not affect the Manager's rights as a Member or constitute a withdrawal of a Member.

A Manager also may be removed by the affirmative vote or written consent of a majority of the remaining Managers if such Manager becomes incapable of fulfilling his or her obligations under this Agreement because of injury or physical or mental illness and such incapacity shall exist for thirty (30) working days in the aggregate during any consecutive six (6) month period.

D. Vacancies. Any vacancy occurring for any reason in the number of Managers may be filled by the affirmative vote or written consent of Members holding a Majority Interest.

### 5.3 Powers of Managers.

A. Powers of Managers. Without limiting the generality of Section 5.1, but subject to Section 5.3B and to the express limitations set forth elsewhere in this Agreement, the Managers shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Company, including, without limitation, the power to exercise on behalf and in the name of the Company all of the powers described in Corporations Code Section 17003.

B. Limitations on Power of Managers. Notwithstanding any other provisions of this Agreement, only manager, Robert H. Winters, may contract on behalf of the Company for a debt or liability. Additionally, the Managers shall not have authority hereunder to cause the Company to engage in the following transactions without first obtaining the affirmative vote or written consent of a Majority Interest (or such greater Percentage Interests set forth below) of the Members:

(i) The sale, exchange or other disposition of all, or substantially all, of the Company's assets occurring as part of a single transaction or plan, or in multiple transactions over a 12 month period, except in the orderly liquidation and winding up of the business of the Company upon its duly authorized dissolution, shall require the affirmative vote or written consent of Members holding at least seventy-five percent (75%) in Percentage Interests.

(ii) The merger of the Company with another limited liability company or limited partnership shall require the affirmative vote or written consent of Members holding at least seventy-five percent (75%) in Percentage Interests; provided in no event shall a Member be required to become a general partner in a

merger with a limited partnership without his express written consent or unless the agreement of merger provides each Member with the dissenter's rights described in the Act.

(iii) The merger of the Company with a corporation or a general partnership or other Person shall require the affirmative vote or written consent of all Members.

(iv) The establishment of different classes of Members.

(v) An alteration of the primary purpose of the Company as set forth in Section 2.3.

(vi) Transactions between the Company and one or more of the Managers or one or more of any Manager's Affiliates, or transactions in which one or more Managers, or one or more of any Manager's Affiliates, has a material financial interest.

(vii) Without limiting subsection (vi), the lending of money by the Company to any Manager, Member, or officer.

(viii) Any act which would make it impossible to carry on the ordinary business of the Company.

(ix) The confession of a judgment against the Company.

(x) Any other transaction described in this Agreement as requiring the vote, consent, or approval of the Members.

5.4 Members Have No Managerial Authority. The Members shall have no power to participate in the management of the Company except as expressly authorized by this Agreement or the Articles and except as expressly required by the Act. Unless expressly and duly authorized in writing to do so by a Manager or Managers, no Member shall have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, or to render it liable for any purpose.

5.5 Performance of Duties; Liability of Managers. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, reckless or intentional misconduct, or a knowing violation of law by the Manager. The Managers shall perform their managerial duties in good faith, in a manner they reasonably believe to be in the best interests of the Company and its Members, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs the duties of Manager shall not have any liability by reason of being or having been a Manager of the Company.



In performing their duties, the Managers shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, of the following persons or groups unless they have knowledge concerning the matter in question that would cause such reliance to be unwarranted and provided that the Managers act in good faith and after reasonable inquiry when the need therefor is indicated by the circumstances:

(a) one or more officers, employees or other agents of the Company whom the Managers reasonably believe to be reliable and competent in the matters presented;

(b) any attorney, independent accountant, or other person as to matters which the Managers reasonably believe to be within such person's professional or expert competence; or

(c) a committee upon which the Managers do not serve, duly designated in accordance with a provision of the Articles or this Agreement, as to matters within its designated authority, which committee the Managers reasonably believe to merit competence.

5.6 Devotion of Time. The Managers are not obligated to devote all of their time or business efforts to the affairs of the Company. The Managers shall devote whatever time, effort, and skill as they deem appropriate for the operation of the Company.

5.7 Competing Activities. The Managers and their officers, directors, shareholders, partners, members, managers, agents, employees and Affiliates may engage or invest in, independently or with others, any business activity of any type or description, including without limitation those that might be the same as or similar to the Company's business and that might be in direct or indirect competition with the Company. Neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Managers shall not be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of the character that, if presented to the Company, could be taken by the Company. The managers shall have the right to hold any investment opportunity or prospective economic advantage for their own account or to recommend such opportunity to Persons other than the Company. The Members acknowledge that the Managers and their Affiliates may own and/or manage other businesses, including businesses that may compete with the Company and for the Managers' time. The Members hereby waive any and all rights and claims which they may otherwise have against the Managers and their officers, directors, shareholders, partners, members, managers, agents, employees, and Affiliates as a result of any of such activities.

5.8 Transactions Between the Company and the Managers. Notwithstanding that it may constitute a conflict of interest, the Managers may, and may cause their Affiliates to, engage in any transaction (including, without limitation, the purchase, sale,

lease, or exchange of any property or the rendering of any service, or the establishment of any salary, other compensation, or other terms of employment) with the Company so long as such transaction is not expressly prohibited by this Agreement and so long as the terms and conditions of such transaction, on an overall basis, are fair and reasonable to the Company and are at least as favorable to the Company as those that are generally available from Persons capable of similarly performing them and in similar transactions between parties operating at arm's length, and provided that a Majority Interest of the Members having no interest in such transaction (other than their interests as Members) affirmatively vote or consent in writing to approve the transaction.

A transaction between the Managers and/or their Affiliates, on the one hand, and the Company, on the other hand, shall be conclusively determined to constitute a transaction on terms and conditions, on an overall basis, fair and reasonable to the Company and at least as favorable to the Company as those generally available in a similar transaction between parties operating at arm's length if a Majority Interest of the Members having no interest in such transaction (other than their interests as Members) affirmatively vote or consent in writing to approve the transaction. Notwithstanding the foregoing, the Managers shall not have any obligation, in connection with any such transaction between the Company and the Managers or an Affiliate of the Managers, to seek the consent of the Members.

5.9 Payments to Managers. Except as specified in this Agreement, no Manager or Affiliate of a Manager is entitled to remuneration for services rendered or goods provided to the Company. The Managers and their Affiliates shall receive only the following payments:

A. Management Fee. The Company shall pay the Managers a monthly fee for services in connection with the management of the Company in the amount of \$\_\_\_\_\_. Such fee may be changed from time to time only by an affirmative vote of Members holding at least a Majority Interest, and no Manager shall be prevented from receiving any fee because the Manager is also a Member of the Company.

B. Services Performed by Managers or Affiliates. The Company shall pay the Managers or Affiliates of the Managers for services rendered or goods provided to the Company to the extent that the Managers are not required to render such services or goods themselves without charge to the Company, and to the extent that the fees paid to such Managers or Affiliates do not exceed the fees that would be payable to an independent responsible third party that is willing to perform such services or provide such goods.

C. Expenses. The Company shall reimburse the Managers and their Affiliates for the actual cost of goods and materials used for or by the Company. The Company shall also pay or reimburse the Managers or their Affiliates for organizational

expenses (including, without limitation, legal and accounting fees and costs) incurred to form the Company and prepare the Articles and this Agreement.

5.10 Acts of Managers as Conclusive Evidence of Authority. Any note, mortgage, evidence of indebtedness, contract, certificate, statement, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between the Company and any other person, when signed by at least two Managers (or by one Manager if the Articles state that the Company is managed by only one Manager), is not invalidated as to the Company by any lack of authority of the signing Managers or Manager in the absence of actual knowledge on the part of the other person that the signing Managers or Manager had no authority to execute the same.

5.11 Officers.

A. Appointment of Officers. The Managers may appoint officers at any time. The officers of Company, if deemed necessary by the Managers, may include a chairperson, president, vice president, secretary, and chief financial officer. The officers shall serve at the pleasure of the Managers, subject to all rights, if any, of an officer under any contract of employment. Any individual may hold any number of offices. No officer need be a resident of the State of California or citizen of the United States. If a Manager is not an individual, such Manager's officers may serve as officers of Company if elected by the Members. The officers shall exercise such powers and perform such duties as specified in this Agreement and as shall be determined from time to time by the Managers.

B. Removal, Resignation and Filling of Vacancy of Officers. Subject to the rights, if any, of an officer under a contract of employment, any officer may be removed, either with or without cause, by the Managers at any time.

Any officer may resign at any time by giving written notice to the Managers. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Agreement for regular appointments to that office.

C. Salaries of Officers. Subject to Sections 5.8 and 5.9, the salaries of all officers and agents of the Company shall be fixed by a resolution of the Managers.

D. Duties and Powers of the Chairperson. The chairperson, if such an officer be appointed, shall, if present, preside at meetings of the Members and the Managers, and exercise and perform such other powers and duties as may be from time to time assigned to him by the Managers or prescribed by this Agreement. If there is no president, the chairperson shall in addition be the chief executive officer of the Company and shall have the powers and duties prescribed in Section 5.11E.

E. Duties and Powers of the President. Subject to such supervisory powers, if any, as may be given by the Managers to the chairperson, if there be such an officer, the president shall be the chief executive officer of the Company, and shall, subject to the control of the Managers, have general and active management of the business of the Company and shall see that all orders and resolutions of the Members and Managers are carried into effect. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Managers or this Agreement.

The president shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the Company, except where required or permitted by law to be otherwise signed and executed, and except where the signing and execution thereof shall be expressly delegated by the Managers to some other officer or agent of the Company.

F. Duties and Powers of Vice President. The vice president, or if there shall be more than one, the vice presidents in the order determined by a resolution of the Managers, shall, in the absence or disability of the president, perform the duties and exercise the powers of the president and shall perform such other duties and have such other powers as the Managers by resolution may from time to time prescribe.

G. Duties and Powers of Secretary. The secretary shall attend all meetings of the Managers and all meetings of the Members, and shall record all the proceedings of the meetings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. The secretary shall give, or cause to be given, notice of all meetings of the Members and shall perform such other duties as may be prescribed by the Managers. The secretary shall have custody of the seal, if any, and the secretary shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature. the Managers may give general authority to any other officer to affix the seal of the Company, if any, and to attest the affixing by his or her signature.

The secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Company's transfer agent or registrar, as determined by resolution of the Managers, a register, or a duplicate register, showing the names of all Members and their addresses, their Percentage Interests, the

number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation. The secretary shall also keep all documents described in Section 9.1 and such other documents as may be required under the Act. The secretary shall perform such other duties and have such other authority as may be prescribed elsewhere in this Agreement or from time to time by the Managers. The secretary shall have the general duties, powers and responsibilities of a secretary of a corporation.

If the Managers choose to appoint an assistant secretary or assistant secretaries, in the order of their seniority, in the absence, disability or inability to act of the secretary, shall perform the duties and exercise the powers of the secretary, and shall perform such other duties as the Managers may from time to time prescribe.

H. Duties and Powers of Chief Financial Officer. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, Membership Interests and Economic Interests. The books of account shall at all reasonable times be open to inspection by any Manager.

The chief financial officer shall have the custody of the funds and securities of the Company, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company, and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Managers.

The chief financial officer shall disburse the funds of the Company as may be ordered by the Managers, taking proper vouchers for such disbursements, and shall render to the president and the Managers, at their regular meetings, or when Members so require, at a meeting of the members an account of all his or her transactions as treasurer and of the financial condition of the Company.

The chief financial officer shall perform such other duties and shall have such other responsibility and authority as may be prescribed elsewhere in this Agreement or from time to time by the Managers. The chief financial officer shall have the general duties, powers and responsibility of a chief financial officer of a corporation, and shall be the chief financial and accounting officer of the Company.

If the Managers choose to elect an assistant treasurer or assistant treasurers, the assistant treasurers in the order of their seniority shall, in the absence, disability or inability to act of the chief financial officer, perform the duties and exercise the powers of the chief financial officer, and shall

perform such other duties as the Managers shall from time to time prescribe.

I. Acts of Officers as Conclusive Evidence of Authority. Any note, mortgage, evidence of indebtedness, contract, certificate, statement, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between the Company and any other Person, when signed by the chairperson of the board, the president or any vice president and any secretary, any assistant secretary, the chief financial officer, or any assistant treasurer of the Company, is not invalidated as to the Company by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other Person that the signing officers had no authority to execute the same.

J. Signing Authority of Officers. Subject to Section 5.3B and any restrictions imposed by the Managers:

Any officer, acting alone, is authorized to endorse checks, drafts, and other evidences of indebtedness made payable to the order of the Company, but only for the purpose of deposit into the Company's accounts. All checks, drafts, and other instruments obligating the Company to pay money in an amount of less than \$10,000.00 may be signed by any one officer acting alone. The following shall be authorized signatores on the Company's bank account: Tony Rezzuti, Robert H. Winters and Kelley Erskine.

5.12 Limited Liability. No person who is a Manager or officer or both a Manager and officer of the Company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Manager or officer or both a Manager and officer of the Company.

## ARTICLE VI

### ALLOCATIONS OF NET PROFITS AND NET LOSSES AND DISTRIBUTIONS

#### 6.1 Allocations of Net Profit and Net Loss.

A. Net Loss. Net Loss shall be allocated to the Members in proportion to their Percentage Interests.

Notwithstanding the previous sentence, loss allocations to a Member shall be made only to the extent that such loss allocations will not create a deficit Capital Account balance for that Member in excess of an amount, if any, equal to such Member's share of Company Minimum Gain that would be realized on a foreclosure of the Company's property. Any loss not allocated to a Member because of the foregoing provision shall be allocated to the other Members (to the extent the other Members are not limited

in respect of the allocation of losses under this Section 6.1A). Any loss reallocated under this Section 6.1A shall be taken into account in computing subsequent allocations of income and losses pursuant to this Article VI, so that the net amount of any item so allocated and the income and losses allocated to each Member pursuant to this Article VI, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this Article VI if no reallocation of losses had occurred under this Section 6.1A.

B. Net Profit. Net Profit shall be allocated to the Members in proportion to their Percentage Interests.

6.2 Code Section 704(c) Allocations. Notwithstanding any other provision in this Article VI, in accordance with Code Section 704(c) and the Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value on the date of contribution. Allocations pursuant to this Section 6.3 are solely for purposes of federal, state and local taxes. As such, they shall not affect or in any way be taken into account in computing a Member's Capital Account or share of profits, losses, or other items of distributions pursuant to any provision of this Agreement.

6.3 Allocation of Net Profits and Losses and Distributions in Respect of a Transferred Interest. If any Membership Interest is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year of the Company, each item of income, gain, loss, deduction, or credit of the Company for such Fiscal Year shall be assigned pro rata to each day in the particular period of such Fiscal Year to which such item is attributable (i.e., the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day shall be allocated to the Member based upon his or her respective Membership Interest at the close of such day.

However, for the purpose of accounting convenience and simplicity, the Company shall treat a transfer of, or an increase or decrease in, a Membership Interest which occurs at any time during a semi-monthly period (commencing with the semi-monthly period including the date hereof) as having been consummated on the last day of such semi-monthly period, regardless of when during such semi-monthly period such transfer, increase, or decrease actually occurs (i.e., sales and dispositions made during the first fifteen (15) days of any month will be deemed to have been made on the 15th day of the month).

Notwithstanding any provision above to the contrary, gain or loss of the Company realized in connection with a sale or

other disposition of any of the assets of the Company shall be allocated solely to the parties owning Membership Interests as of the date such sale or other disposition occurs.

6.4 Distribution of Assets by the Company. Subject to applicable law and any limitations contained elsewhere in this Agreement, the Managers may elect from time to time to distribute Distributable Cash to the Members, which distributions shall be in the following order of priority:

(a) To the Members in proportion to their unreturned Capital Contributions until each Member has recovered his or her Capital Contributions; and

(b) To the Members in proportion to their Percentage Interests.

All such distributions shall be made only to the Persons who, according to the books and records of the Company, are the holders of record of the Economic Interests in respect of which such distributions are made on the actual date of distribution. Neither the Company nor any Manager shall incur any liability for making distributions in accordance with this Section 6.5

6.5 Form of Distribution. A Member, regardless of the nature of the Member's Capital Contribution, has no right to demand and receive any distribution from the Company in any form other than money. No Member may be compelled to accept from the Company a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Members. Except upon a dissolution and the winding up of the Company, no Member may be compelled to accept a distribution of any asset in kind.

6.6 Restriction on Distributions.

A. No distribution shall be made if, after giving effect to the distribution:

(i) The Company would not be able to pay its debts as they become due in the usual course of business.

(ii) The Company's total assets would be less than the sum of its total liabilities plus, unless this Agreement provides otherwise, the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members, if any, upon dissolution that are superior to the rights of the Member receiving the distribution.

B. The managers may base a determination that a distribution is not prohibited on any of the following:



(i) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.

(ii) A fair valuation.

(iii) Any other method that is reasonable in the circumstances.

Except as provided in Section 17254(e) of the Corporations Code, the effect of a distribution is measured as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or the date payment is made if it occurs more than 120 days of the date of authorization.

C. A Member or Manager who votes for a distribution in violation of this Agreement or the Act is personally liable to the Company for the amount of the distribution that exceeds what could have been distributed without violating this Agreement or the Act if it is established that the Member or Manager did not act in compliance with Section 6.7B or Section 10.4. Any Member or Manager who is so liable shall be entitled to compel contribution from (i) each other Member or Manager who also is so liable and (ii) each Member for the amount the Member received with knowledge of facts indicating that the distribution was made in violation of this Agreement or the Act.

6.7 Return of Distributions. Except for distributions made in violation of the Act or this Agreement, no Member or Economic Interest Owner shall be obligated to return any distribution to the Company or pay the amount of any distribution for the account of the Company or to any creditor of the Company. The amount of any distribution returned to the Company by a Member or Economic Interest Owner or paid by a Member or Economic Interest Owner for the account of the Company or to a creditor of the Company shall be added to the account or accounts from which it was subtracted when it was distributed to the Member or Economic Interest Owner.

6.8 Obligations of Members to Report Allocations. The Members are aware of the income tax consequences of the allocations made by this Article VI and hereby agree to be bound by the provisions of this Article VI in reporting their shares of Company income and loss for income tax purposes.

## ARTICLE VII

### TRANSFER AND ASSIGNMENT OF INTERESTS

7.1 Transfer and Assignment of Interests. No Member shall be entitled to transfer, assign, convey, sell, encumber or in any way alienate all or any part of his or her Membership Interest except with the prior written consent of all of the other Members,

which consent may be given or withheld, conditioned or delayed (as allowed by this Agreement or the Act), as the other Members may determine in their sole discretion. Transfers in violation of this Article VII shall only be effective to the extent set forth in Section 7.7. After the consummation of any transfer of any part of a Membership Interest, the Membership Interest so transferred shall continue to be subject to the terms and provisions of this Agreement and any further transfers shall be required to comply with all the terms and provisions of this Agreement.

7.2 Further Restrictions on Transfer of Interests. In addition to other restrictions found in this Agreement, no Member shall transfer, assign, convey, sell, encumber or in any way alienate all or any part of his or her Membership Interest: (i) without compliance with Section 12.10, and (ii) if the Membership Interest to be transferred, assigned, sold or exchanged, when added to the total of all other Membership Interests sold or exchanged in the preceding twelve (12) consecutive months prior thereto, would cause the termination of the Company under the Code, as determined by the Managers.

7.3 Substitution of Members. A transferee of a Membership Interest shall have the right to become a substitute Member only if (i) the requirements of Sections 7.1 and 7.2 relating to unanimous consent of Members, securities and tax requirements hereof are met, (ii) such Person executes an instrument satisfactory to the Managers accepting and adopting the terms and provisions of this Agreement, and (iii) such person pays any reasonable expenses in connection with his or her admission as a new Member. The admission of a substitute Member shall not result in the release of the Member who assigned the Membership Interest from any liability that such Member may have to the Company.

7.4 Family and Affiliate Transfers. The Membership Interest of any Member may be transferred subject to compliance with Section 7.2, and without the prior written consent of all Members as required by Section 7.1, upon consent of the Managers, which shall not be unreasonably withheld, by the Member (i) by inter vivos gift or by testamentary transfer to any spouse, parent, sibling, in-law, child or grandchild of the Member, or to a trust for the benefit of the Member or such spouse, parent, sibling, in-law, child or grandchild of the Member, or (ii) to any Affiliate of the Member; it being agreed that in executing this Agreement, each Member has consented to such transfers.

7.5 Effective Date of Permitted Transfers. Any permitted transfer of all or any portion of a Membership Interest shall be effective as of the date provided in Section 6.3 following the date upon which the requirements of Sections 7.1, 7.2 and 7.3 have been met. The Managers shall provide the Members with written notice of such transfer as promptly as possible after the requirements of Sections 7.1, 7.2 and 7.3 have been met. Any transferee of a Membership Interest shall take subject to the restrictions on transfer imposed by this Agreement.

7.6 Rights of Legal Representatives. If a Member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the Member's person or property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling the Member's estate or administering the Member's property, including any power the Member has under the Articles or this Agreement to give an assignee the right to become a Member. If a Member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that Member may be exercised by his or her legal representative or successor.

7.7 No Effect to Transfers in Violation of Agreement. Upon any transfer of a Membership Interest in violation of this Article VII, the transferee shall have no right to vote or participate in the management of the business, property and affairs of the Company or to exercise any rights of a Member. Such transferee shall only be entitled to become an Economic Interest Owner and thereafter shall only receive the share of one or more of the Company's Net Profits, Net Losses and distributions of the Company's assets to which the transferor of such Economic Interest would otherwise be entitled. Notwithstanding the immediately preceding sentences, if, in the determination of the Managers, a transfer in violation of this Article VII would cause the termination of the Company under the Code, in the sole discretion of the Managers, the transfer shall be null and void and the purported transferee shall not become either a Member or an Economic Interest Owner.

Upon and contemporaneously with any transfer, assignment, conveyance or sale (whether arising out of an attempted charge upon that Member's Economic Interest by judicial process, a foreclosure by a creditor of the Member or otherwise) of a Member's Economic Interest which does not at the same time transfer the balance of the rights associated with the Membership Interest transferred by the Member (including, without limitation, the rights of the Member to vote or participate in the management of the business, property and affairs of the Company), the Company shall purchase from the Member, and the Member shall sell to Company for a purchase price of \$100, all remaining rights and interests retained by the Member that immediately before the transfer, assignment, conveyance or sale were associated with the transferred Economic Interest. Such purchase and sale shall not, however, result in the release of the Member from any liability to the Company as a Member.

Each Member acknowledges and agrees that the right of the Company to purchase such remaining rights and interests from a Member who transfers a Membership Interest in violation of this Article VII is not unreasonable under the circumstances existing as of the date hereof.

7.8 Right of First Refusal. Each time a Member proposes to transfer, assign, convey, sell, encumber or in any way alienate all or any part of his or her Membership Interest (or as required by operation of law or other involuntary transfer to do so) other than pursuant to Section 7.4, such Member shall first offer such Membership Interest to the Company and the non-transferring Members in accordance with the following provisions:

A. Such Member shall deliver a written notice to the Company and the other Members stating (i) such Member's bona fide intention to transfer such Membership Interest, (ii) the name and address of the proposed transferee, (iii) the Membership Interest to be transferred, and (iv) the purchase price in terms of payment for which the Member proposes to transfer such Membership Interest.

B. Within thirty (30) days after receipt of the notice described in Section 7.8A, each non-transferring Member shall notify the Managers in writing of his or her desire to purchase a portion of the Membership Interest being so transferred. The failure of any Member to submit a notice within the applicable period shall constitute an election on the part of that Member not to purchase any of the Membership Interest which may be so transferred. Each Member so electing to purchase shall be entitled to purchase a portion of such Membership Interest in the same proportion that the Percentage Interest of such Member bears to the aggregate of the Percentage Interests of all of the Members electing to so purchase the Membership Interest being transferred. In the event any Member elects to purchase none or less than all of his or her pro rata share of such Membership Interest, then the other Members can elect to purchase more than their pro rata share. If such Members fail to purchase the entire Membership Interest being transferred, the Company may purchase any remaining share of such Membership Interest.

C. Within ninety (90) days after receipt of the notice described in Section 7.8A the Company and the Members electing to purchase such Membership Interest shall have the first right to purchase or obtain such Membership Interest upon the price and terms of payment designated in such notice. If such notice provides for the payment of non-cash consideration, the Company and such purchasing Members each may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non-cash consideration offered as determined by the Managers.

D. If the Company or the other Members elect not to purchase or obtain all of the Membership Interest designated in such notice, then the transferring Member may transfer the Membership Interest described in the notice to the proposed transferee, providing such transfer (i) is completed within thirty (30) days after the expiration of the Company's and the other Members' right to purchase such Membership Interest, (ii) is made on terms no less favorable to the transferring Member than as designated in the notice, and (iii) the requirements of Sections

7.1, 7.2 and 7.3 relating to unanimous consent of Members, securities and tax requirements hereof are met. If such Membership Interest is not so transferred, the transferring Member must give notice in accordance with this Section prior to any other or subsequent transfer of such Membership Interest.

## ARTICLE VIII

### CONSEQUENCES OF DEATH, DISSOLUTION, RETIREMENT OR BANKRUPTCY OF MEMBER

8.1 Dissolution Event. Upon the occurrence of a Dissolution Event, the Company shall dissolve unless the remaining Members ("Remaining Members") holding all of the remaining Membership Interests consent within ninety (90) days of the Dissolution Event to the continuation of the business of the Company. If the Remaining Members consent to the continuation of the business of the Company, the Company and/or the Remaining Members shall purchase, and the Member whose actions or conduct resulted in the Dissolution Event ("Former Member") or such Former Member's legal representative shall sell, the Former Member's Membership Interest ("Former Member's Interest") as provided in this Article VIII to avoid dissolution of the Company.

8.2 Withdrawal. Notwithstanding Section 8.1, only upon the withdrawal by a Member in accordance with Section 4.4 will such Member be treated as a Former Member, and will the Company and/or the Remaining Members be obligated to purchase, and will the Former Member be obligated to sell, the Former Member's Interest as provided in this Article VIII.

8.3 Purchase Price. The purchase price for the Former Member's Interest subject to this Agreement shall be equal to the agreed value of the Company multiplied by the Former Member's percentage interest in the Company. The initial agreed value of the Company is \$10,000.00, and sixty (60) days after the end of each fiscal year, the parties to this Agreement shall review the financial condition of the Company and shall determine by mutual agreement the fair market value of the Company which, if agreed on, shall be the value of the Company until a different value is agreed on or is otherwise established under the provisions of this Agreement. If the parties are able to reach mutual agreement, they shall evidence it in writing in an exhibit to this Agreement. If the parties are unable to mutually agree on the fair market value of the Company as provided above, any party to this Agreement may require that the value of the Company be established by appraiser. In this event the appraisal shall be conducted by a qualified appraiser, and the cost of the appraiser shall be borne by the Company.

8.4 Notice of Intent to Purchase. Within thirty (30) days after the Managers have notified the Remaining Members as to the purchase price of the Former Member's Interest determined in accordance with Section 8.3, each Remaining Member shall notify the

Managers in writing of his or her desire to purchase a portion of the Former Member's Interest. The failure of any Remaining Member to submit a notice within the applicable period shall constitute an election on the part of the Member not to purchase any of the Former Member's Interest. Each Remaining Member so electing to purchase shall be entitled to purchase a portion of the Former Member's Interest in the same proportion that the Percentage Interest of the Remaining Member bears to the aggregate of the Percentage Interests of all of the Remaining Members electing to purchase the Former Member's Interest.

8.5 Election to Purchase Less Than All of the Former Member's Interest. If any Remaining Member elects to purchase none or less than all of his or her pro rata share of the Former Member's Interest, then the Remaining Members can elect to purchase more than their pro rata share. If the Remaining Members fail to purchase the entire interest of the Former Member, the Company shall purchase any remaining share of the Former Member's Interest.

8.6 Payment of Purchase Price. The purchase price shall be paid by the Company or the Remaining Members, as the case may be, by any of the following methods, each of which may be selected separately by the Company or the Remaining Members.

A. The Company or the Remaining Members shall at the closing pay in cash the total purchase price for the Former Member's Interest; or

B. The Company or the Remaining Members shall pay at the closing one-fifth (1/5) of the purchase price in which case the balance of the purchase price shall then be paid in four equal annual principal installments, plus accrued interest, and be payable each year on the anniversary date of the closing. The unpaid principal balance shall accrue interest at the current applicable federal rate as provided in the Code for the month in which the initial payment is made, but the Company and the Remaining Members shall have the right to prepay in full or in part at any time without penalty. The obligation to pay the balance due shall be evidenced by a promissory note, and if purchased by a Remaining Member, secured by a pledge of the Membership Interest being purchased.

C. The Company may elect to fund the payment of the purchase price with life insurance on the life of any Member in the face amount shown on Exhibit E to this Agreement. Each such policy is listed and described on the Exhibit and any additional policies thereafter acquired for the same purpose shall also be listed on the Exhibit. Each policy belongs solely to the Company. No Member shall exercise any of the powers of ownership on any of the policies. On the death of any Member, the life insurance proceeds shall be paid to that Member's estate up to the amount of the purchase price established in section 8.3. Any excess insurance proceeds shall go to the Company. Any deficiencies shall be paid for as set forth in this section.

8.7 Closing of Purchase of Former Member's Interest. The closing for the sale of a Former Member's Interest pursuant to this Article VIII shall be held at 10:00 a.m. at the principal office of Company no later than sixty (60) days after the determination of the purchase price, except that if the closing date falls on a Saturday, Sunday, or California legal holiday, then the closing shall be held on the next succeeding business day. At the closing, the Former Member or such Former Member's legal representative shall deliver to the Company or the Remaining Members an instrument of transfer (containing warranties of title and no encumbrances) conveying the Former Member's Interest. The Former Member or such Former Member's legal representative, the Company and the Remaining Members shall do all things and execute and deliver all papers as may be necessary to fully consummate such sale and purchase in accordance with the terms and provisions of this Agreement.

8.8 Purchase Terms Varied by Agreement. Nothing contained herein is intended to prohibit Members from agreeing upon other terms and conditions for the purchase by the Company or any Member of the Membership Interest of any Member in the Company desiring to retire, withdraw or resign, in whole or in part, as a Member.

8.9 Notwithstanding the provisions of this Article VIII, in the event of the death or withdrawal of Steven P. Kelley and/or Robert H. Winters, PCA Industries, Inc. shall purchase the interest of the deceased member on the terms contained in this article

## ARTICLE IX

### ACCOUNTING, RECORDS, REPORTING BY MEMBERS

9.1 Books and Records. The books and records of the Company shall be kept, and the financial position and results of its operations recorded, in accordance with the accounting methods followed for federal income tax purposes. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its principal office in California all of the following:

A. A current list of the full name and last known business or residence address of each Member and Economic Interest Owner set forth in alphabetical order, together with the Capital Contributions, Capital Account and Percentage Interest of each Member and Economic Interest Owner;

B. A current list of the full name and business or residence address of each Manager;

C. A copy of the Articles and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed;

D. Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

E. A copy of this Agreement and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

F. Copies of the financial statements of the Company, if any, for the six most recent Fiscal Years; and

G. The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four Fiscal Years.

#### 9.2 Delivery to Members and Inspection.

A. Upon the request of any Member or Economic Interest Owner for purposes reasonably related to the interest of that Person as a Member or Economic Interest Owner, the Managers shall promptly deliver to the requesting Member or Economic Interest Owner, at the expense of the Company, a copy of the information required to be maintained by Sections 9.1 A, B and D, and a copy of this Agreement.

B. Each Member, Manager and Economic Interest Owner has the right, upon reasonable request for purposes reasonably related to the interest of the Person as Member, Manager or Economic Interest Owner, to:

(i) inspect and copy during normal business hours any of the Company records described in Sections 9.1A through G; and

(ii) obtain from the Managers, promptly after their becoming available, a copy of the Company's federal, state, and local income tax or information returns for each Fiscal Year.

C. Members representing at least five percent (5%) of the Percentage Interests, or three or more Members, make a written request to the Managers for an income statement of the Company for the initial three-month, six-month, or nine-month period of the current Fiscal Year ended more than 30 days prior to the date of the request, and a balance sheet of the Company as of the end of that period. Such statement shall be accompanied by the report thereon, if any, of the independent accountants engaged by the Company or, if there is no report, the certificate of a Manager that the statement was prepared without audit from the books and records of the Company. If so requested, the statement shall be delivered or mailed to the Members within 30 days thereafter.

D. Any request, inspection or copying by a Member or Economic Interest Owner under this Section 9.2 may be made by that Person or that Person's agent or attorney.



E. The Managers shall promptly furnish to a Member a copy of any amendment to the Articles or this Agreement executed by a Manager pursuant to a power of attorney from the Member.

9.3 Annual Statements.

A. The Managers shall cause an annual report to be sent to each of the Members not later than 120 days after the close of the Fiscal Year. The report shall contain a balance sheet as of the end of the Fiscal Year and an income statement and statement of changes in financial position for the Fiscal Year. Such Financial statements shall be accompanied by the report thereon, if any, of the independent accountants engaged by the Company or, if there is no report, the certificate of a Manager that the financial statements were prepared without audit from the books and records of the Company.

B. The Managers shall cause to be prepared at least annually, at Company expense, information necessary for the preparation of the Members' and Economic Interest Owners' federal and state income tax returns. The Managers shall send or cause to be sent to each Member or Economic Interest Owner within 90 days after the end of each taxable year such information as is necessary to complete federal and state income tax or information returns, and, if the Company has 35 or fewer Members, a copy of the Company's federal, state, and local income tax or information returns for that year.

C. The Managers shall cause to be filed at least annually with the California Secretary of State the statement required under California Corporations Code Section 17060.

9.4 Financial and Other Information. The Managers shall provide such financial and other information relating to the Company or any other Person in which the Company owns, directly or indirectly, an equity interest, as a Member may reasonably request. The Managers shall distribute to the Members, promptly after the preparation or receipt thereof by the Managers, any financial or other information relating to any Person in which the Company owns, directly or indirectly, an equity interest, including any filings by such Person under the Securities Exchange Act of 1934, as amended, that is received by the Company with respect to any equity interest of the Company in such Person.

9.5 Filings. The Managers, at Company expense, shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The Managers, at Company expense, shall also cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to, or restatements of, the Articles and all reports required to be filed by the Company with those entities under the Act or other then current applicable laws, rules, and regulations. If a Manager required by the Act to execute or file any document fails, after demand, to do so within a reasonable period of time or refuses to do so, any other Manager or Member may

prepare, execute and file that document with the California Secretary of State.

9.6 Bank Accounts. The Managers shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company, and shall not permit the funds of the Company to be commingled in any fashion with the funds of any other Person.

9.7 Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Managers. The Managers may rely upon the advice of their accountants as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

9.8 Tax Matters for the Company Handled by Managers and Tax Matters Partner. The Managers shall from time to time cause the Company to make such tax elections as they deem to be in the best interests of the Company and the Members. The Tax Matters Partner, as defined in Code Section 6231, shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting judicial and administrative proceedings, and shall expend the Company funds for professional services and costs associated therewith. The Tax Matters Partner shall oversee the Company tax affairs in the overall best interests of the Company. If for any reason the Tax Matters Partner can no longer serve in that capacity or ceases to be a Member or Manager, as the case may be, Members holding a Majority Interest may designate another to be Tax Matters Partner.

## ARTICLE X

### DISSOLUTION AND WINDING UP

10.1 Dissolution. The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

A. Upon the happening of any event of dissolution specified in the Articles;

B. Upon the entry of a decree of judicial dissolution pursuant to Section 17351 of the Corporation Code;

C. Upon the vote of Members holding a Majority in Interest or of non-defaulting Members holding a majority of the Percentage Interests held by all non-defaulting Members pursuant to Section 3.5C;

D. The occurrence of a Dissolution Event and the failure of the Remaining Members to consent in accordance with Section 8.1 to continue the business of the Company within ninety (90) days after the occurrence of such event or the failure of the

Company or the Remaining Members to purchase the Former Member's Interest as provided in Section 8.2; or

E. The sale of all or substantially all of the assets of Company.

10.2 Certificate of Dissolution. As soon as possible following the occurrence of any of the events specified in Section 10.1, the Managers who have not wrongfully dissolved the Company or, if none, the Members, shall execute a Certificate of Dissolution in such form as shall be prescribed by the California Secretary of State and file the Certificate as required by the Act.

10.3 Winding Up. Upon the occurrence of any event specified in Section 10.1, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. The Managers who have not wrongfully dissolved the Company or, if none, the Members, shall be responsible for overseeing the winding up and liquidation of Company, shall take full account of the liabilities of Company and assets, shall either cause its assets to be sold or distributed, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided in Section 10.5. The Persons winding up the affairs of the Company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the Company. The Managers or Members winding up the affairs of the Company shall be entitled to reasonable compensation for such services.

10.4 Distributions in Kind. Any non-cash asset distributed to one or more Members shall first be valued at its fair market value to determine the Net Profit or Net Loss that would have resulted if such asset were sold for such value, such Non Profit or Net Loss shall then be allocated pursuant to Article VI, and the Members' Capital Accounts shall be adjusted to reflect such allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in such distributed asset shall be the fair market value of such interest (net of any liability secured by such asset that such Member assumes or takes subject to). The fair market value of such asset shall be determined by the Managers or by the Members or if any Member objects by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) selected by the Manager or liquidating trustee and approved by the Members.

10.5 Order of Payment of Liabilities Upon Dissolution.

A. After determining that all known debts and liabilities of the Company in the process of winding-up, including, without limitation, debts and liabilities to Members who are creditors of the Company, have been paid or adequately provided for, the remaining assets shall be distributed to the Members in

accordance with their positive Capital Account balances, after taking into account income and loss allocations for the Company's taxable year during which liquidation occurs. Such liquidating distributions shall be made by the end of the Company's taxable year in which the Company is liquidated, or, if later, within ninety (90) days after the date of such liquidation.

B. The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(i) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof, and the provision, including the financial responsibility of the Person, was determined in good faith and with reasonable care by the Members or Managers to be adequate at the time of any distribution of the assets pursuant to this Section.

(ii) The amount of the debt or liability has been deposited as provided in Section 2008 of the Corporations Code.

This Section 10.5.B shall not prescribe the exclusive means of making adequate provisions for debts and liabilities.

10.6 Compliance with Regulations. All payments to the Members upon the winding up and dissolution of Company shall be strictly in accordance with the positive capital account balance limitation and other requirements of Regulations Section 1.704-1(b)(2)(ii)(d).

10.7 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely at the assets of Company for the return of his or her positive Capital Account balance and shall have no recourse for his or her Capital Contribution and/or share of Net Profits (upon dissolution or otherwise) against the Managers or any other Member except as provided in Article XI.

10.8 Certificate of Cancellation. The Managers or Members who filed the Certificate of Dissolution shall cause to be filed in the office of, and on a form prescribed by, the California Secretary of State, a certificate of cancellation of the Articles upon the completion of the winding up of the affairs of the Company.

10.9 No Action for Dissolution. Except as expressly permitted in this Agreement, a Member shall not take any voluntary action that directly causes a Dissolution Event. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company under circumstances where

dissolution is not required by Section 10.1. This Agreement has been drawn carefully to provide fair treatment of all parties and equitable payment in liquidation of the Economic Interests. Accordingly, except where the Managers have failed to liquidate the Company as required by this Article X, each Member hereby waives and renounces his or her right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of judicial dissolution of the Company on the ground that (a) it is not reasonably practicable to carry on the business of the Company in conformity with the Articles or this Agreement, or (b) dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member. Damages for breach of this Section 10.10 shall be monetary damages only (and not specific performance), and the damages may be offset against distributions by the Company to which such Member would otherwise be entitled.

## ARTICLE XI

### INDEMNIFICATION AND INSURANCE

11.1 Indemnification of Agents. The Company shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a Member, Manager, officer, employee or other agent of the Company or that, being or having been such a Member, Manager, officer, employee or agent, he or she is or was serving at the request of the Company as a manager, director, officer, employee or other agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to hereinafter as an "agent"), to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. The Managers shall be authorized, on behalf of the Company, to enter into indemnity agreements from time to time with any Person entitled to be indemnified by the Company hereunder, upon such terms and conditions as the Managers deem appropriate in their business judgment.

11.2 Insurance. The Company shall have the power to purchase and maintain insurance on behalf of any Person who is or was an agent of the Company against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of Section 11.1 or under applicable law.

## ARTICLE XII

### INVESTMENT REPRESENTATIONS

Each Member hereby represents and warrants to, and agrees with, the Managers, the other Members, and the Company as follows:

12.1 Preexisting Relationship or Experience. (i) He or she has a preexisting personal or business relationship with the Company or one or more of its officers, Managers or control persons or (ii) by reason of his or her business or financial experience, or by reason of the business or financial experience of his or her financial advisor who is unaffiliated with and who is not compensated, directly or indirectly, by the Company or any affiliate or selling agent of the Company, he or she is capable of evaluating the risks and merits of an investment in the Membership Interest and of protecting his or her own interests in connection with this investment.

12.2 No Advertising. He or she has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation with respect to the sale of the Membership Interest.

12.3 Investment Intent. He or she is acquiring the Membership Interest for investment purposes for his or her own account only and not with a view to or for sale in connection with any distribution of all or any part of the Membership Interest. No other person will have any direct or indirect beneficial interest in or right to the Membership Interest.

12.4 Purpose of Entity. If the Member is a corporation, partnership, limited liability company, trust, or other entity, it was not organized for the specific purpose of acquiring the Membership Interest.

12.5 Residency. He or she is a resident of the state of California.

12.6 Economic Risk. He or she is financially able to bear the economic risk of an investment in the Membership Interest, including the total loss thereof.

12.7 No Registration of Membership Interest. He or she acknowledges that the Membership Interest has not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or qualified under the California Corporate Securities Law of 1968, as amended, or any other applicable blue sky laws in reliance, in part, on his or her representations, warranties, and agreements herein.

12.8 Membership Interest in Restricted Security. He or she understands that the Membership Interest is a "restricted

security" under the Securities Act in that the Membership Interest will be acquired from the Company in a transaction not involving a public offering, and that the Membership Interest may be resold without registration under the Securities Act only in certain limited circumstances and that otherwise the Membership interest must be held indefinitely. In this connection, he or she understands the resale limitations imposed by the Securities Act and is familiar with SEC Rule 144, as presently in effect, and the conditions which must be met in order for that Rule to be available for resale of "restricted securities," including the requirement that the securities must be held for at least two years after purchase thereof from the Company prior to resale (three years in the absence of publicly available information about the Company) and the condition that there be available to the public current information about the Company under certain circumstances. He or she understands that the Company has not made such information available to the public and has no present plans to do so.

12.9 No Obligation to Register. He or she represents, warrants, and agrees that the Company and the Managers are under no obligation to register or qualify the Membership Interest under the Securities Act or under any state securities law, or to assist him or her in complying with any exemption from registration and qualification.

12.10 No Disposition in Violation of Law. Without limiting the representations set forth above, and without limiting Article VII of this Agreement, he or she will not make any disposition of all or any part of the Membership Interest which will result in the violation by him or her or by the Company of the Securities Act, the California Corporate Securities Law of 1968, or any other applicable securities laws. Without limiting the foregoing, he or she agrees not to make any disposition of all or any part of the Membership Interest unless and until:

A. There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement and any applicable requirements of state securities laws; or

B. (i) He or she has notified the Company of the proposed disposition and has furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (ii) if reasonably requested by the Managers, he or she has furnished the Company with a written opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of any securities under the Securities Act or the consent of or a permit from appropriate authorities under any applicable state securities law.

C. In the case of any disposition of all or any part of the Membership Interest pursuant to SEC Rule 144, in addition to the matters set forth in Section 12.11B, he or she shall promptly forward to the Company a copy of any Form 144 filed

with the SEC with respect to such disposition and a letter from the executing broker satisfactory to the Company evidencing compliance with SEC Rule 144. If SEC Rule 144 is amended or if the SEC's interpretations thereof in effect at the time of any such disposition have changed from its present interpretations thereof, he or she shall provide the Company with such additional documents as the Managers may reasonably require.

12.11 Legends. He or she understands that the certificates (if any) evidencing the Membership Interest may bear one or all of the following legends:

A. "THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS, AND CONDITIONS WHICH ARE SET FORTH HEREIN."

B. Any legend required by applicable state securities laws.

12.12 Investment Risk. He or she acknowledges that the Membership Interest is a speculative investment which involves a substantial degree of risk of loss by him or her of his or her entire investment in the Company, that he or she understands and takes full cognizance of the risk factors related to the purchase of the Membership Interest, and that the Company is newly organized and has no financial or operating history.

12.13 Investment Experience. He or she is an experienced investor in unregistered and restricted securities of limited liability companies or limited partnerships.

12.14 Restrictions on Transferability. He or she acknowledges that there are substantial restrictions on the transferability of the Membership Interest pursuant to this Agreement, that there is no public market for the Membership Interest and none is expected to develop, and that, accordingly, it may not be possible for him or her to liquidate his or her investment in the Company.

12.15 Information Reviewed. He or she has received and reviewed all information he or she considers necessary or appropriate for deciding whether to purchase the Membership Interest. He or she has had an opportunity to ask questions and receive answers from the Company and its officers, Managers and employees regarding the terms and conditions of purchase of the Membership Interest and regarding the business, financial affairs, and other aspects of the Company and has further had the opportunity to obtain all information (to the extent the Company



possesses or can acquire such information without unreasonable effort or expense) which he or she deems necessary to evaluate the investment and to verify the accuracy of information otherwise provided to him or her.

12.16 No Representations by Company. Neither any Manager, any agent or employee of the Company or of any Manager, or any other Person has at any time expressly or implicitly represented, guaranteed, or warranted to him or her that he or she may freely transfer the Membership Interest, that a percentage of profit and/or amount or type of consideration will be realized as a result of an investment in the Membership Interest, that past performance or experience on the part of the Managers or their Affiliates or any other person in any way indicates the predictable results of the ownership of the Membership Interest or of the overall Company business, that any cash distributions from Company operations or otherwise will be made to the Members by any specific date or will be made at all, or that any specific tax benefits will accrue as a result of an investment in the Company.

12.17 Consultation with Attorney. He or she has been advised to consult with his or her own attorney regarding all legal matters concerning an investment in the Company and the tax consequences of participating in the Company, and has done so, to the extent he or she considers necessary.

12.18 Tax Consequences. He or she acknowledges that the tax consequences to his or her investing in the Company will depend on his or her particular circumstances, and neither the Company, the Managers, the Members, nor the partners, shareholders, members, managers, agents, officers, directors, employees, Affiliates, or consultants of any of them will be responsible or liable for the tax consequences to him or her of an investment in the Company. He or she will look solely to, and rely upon, his or her own advisers with respect to the tax consequences of this investment.

12.19 No Assurance of Tax Benefits. He or she acknowledges that there can be no assurance that the Code or the Regulations will not be amended or interpreted in the future in such a manner so as to deprive the Company and the Members of some or all of the tax benefits they might now receive, nor that some of the deductions claimed by the Company or the allocations of items of income, gain, loss, deduction, or credit among the Members may not be challenged by the Internal Revenue Service.

12.20 Indemnity. He or she shall indemnify and hold harmless the Company, each and every Manager, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, agents, attorneys, registered representatives, and control persons of any such entity who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by him or her including, without

limitation, the information in this Agreement, against losses, liabilities, and expenses of the Company, each and every Manager, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, attorneys, accountants, agents, registered representatives, and control persons of any such Person (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by such Person in connection with such action, suit, proceeding, or the like.

## ARTICLE XIII

### MISCELLANEOUS

13.1 Counsel to the Company. Counsel to the Company may also be counsel to any Manager or any Affiliate of a Manager. The Managers may execute on behalf of the Company and the Members any consent to the representation of the Company that counsel may request pursuant to the California Rules of Professional Conduct or similar rules in any other jurisdiction ("Rules"). The Company has initially selected ACKERMAN, MORDOCK & BOWEN ("Company Counsel") as legal counsel to the Company. Each Member acknowledges that Company Counsel does not represent any Member in the absence of a clear and explicit agreement to such effect between the Member and Company Counsel, and that in the absence of any such agreement Company Counsel shall owe no duties directly to a Member. In the event any dispute or controversy arises between any Members and the Company, or between any Members or the Company, on the one hand, and a Manager (or Affiliate of a Manager) that Company Counsel represents, on the other hand, then each Member agrees that Company Counsel may represent either the Company or such Manager (or his or her Affiliate), or both, in any such dispute or controversy to the extent permitted by the Rules, and each Member hereby consents to such representation. Each Member further acknowledges that Company Counsel has not represented the interests of any Member other than Steven P. Kelley and Robert H. Winters in the preparation and negotiation of this Agreement.

13.2 Complete Agreement. This Agreement and the Articles constitute the complete and exclusive statement of agreement among the Members and Managers with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members and Managers or any of them. No representation, statement, condition or warranty not contained in this Agreement or the Articles will be binding on the Members or Managers or have any force or effect whatsoever. To the extent that any provision of the Articles conflict with any provision of this Agreement, the Articles shall control.

13.3 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective successors and assigns.

13.4 Parties in Interest. Except as expressly provided in the Act, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any Persons other than the Members and Managers and their respective successors and assigns nor shall anything in this Agreement relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

13.5 Pronouns; Statutory References. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the context in which they are used may require. Any reference to the Code, the Regulations, the Act, Corporations Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

13.6 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

13.7 Interpretation. In the event any claim is made by any Member relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Member or his or her counsel.

13.8 References to this Agreement. Numbered or lettered articles, sections and subsections herein contained refer to articles, sections and subsections of this Agreement unless otherwise expressly stated.

13.9 Jurisdiction. Each Member hereby consents to the exclusive jurisdiction of the state and federal courts sitting in California in any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement, provided such claim is not required to be arbitrated pursuant to Section 13.10. Each Member further agrees that personal jurisdiction over him or her may be effected by service of process by registered or certified mail addressed as provided in Section 13.14 of this Agreement, and that when so made shall be as if served upon him or her personally within the State of California.

13.10 Disputed Matters. Except as otherwise provided in this Agreement, any controversy or dispute arising out of this Agreement, the interpretation of any of the provisions hereof, or the action or inaction of any Member or Manager hereunder shall be submitted to arbitration in Orange County, California before the American Arbitration Association under the commercial arbitration rules then in effect. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any

court having jurisdiction thereof. No action at law or in equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by any Member except (a) an action to compel arbitration pursuant to this Section 13.10 or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this Section 13.10.

13.11 Exhibits. All Exhibits attached to this Agreement are incorporated and shall be treated as if set forth herein.

13.12 Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

13.13 Additional Documents and Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

13.14 Notices. Any notice to be given or to be served upon the Company or any party hereto in connection with this Agreement must be in writing (which may include facsimile) and will be deemed to have been given and received when delivered to the address specified by the party to receive the notice. Such notices will be given to a Member or Manager at the address specified in Exhibit A hereto. Any party may, at any time by giving five (5) days' prior written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice will be given.

13.15 Amendments. All amendments to this Agreement will be in writing and signed by all of the Members.

13.16 Reliance on Authority of Person Signing Agreement. If a Member is not a natural person, neither the Company nor any Member will (a) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual or (b) be responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

13.17 No Interest in Company Property; Waiver of Action for Partition. No Member or Economic Interest Owner has any interest in specific property of the Company. Without limiting the foregoing, each Member and Economic Interest Owner irrevocably waives during the term of the Company any right that he or she may have to maintain any action for partition with respect to the property of the Company.

13.18 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

13.19 Attorney Fees. In the event that any dispute between the Company and the members or among the Members should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses.

13.20 Time is of the Essence. All dates and times in this Agreement are of the essence.

13.21 Remedies Cumulative. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any person may be lawfully entitled.

13.22 Special Power of Attorney.

A. Attorney in Fact. Each Member grants the Managers a special power of attorney irrevocably making, constituting, and appointing the Managers as the Member's attorney in fact, with all power and authority to act in the Member's name and on the Member's behalf to execute, acknowledge and deliver and swear to in the execution, acknowledgement, delivery and filing of the following documents:

(i) Promissory notes to be delivered pursuant to Section 3.5;

(ii) Security agreements to be delivered pursuant to Section 3.5;

(iii) UCC-1 financing statements to be delivered pursuant to Section 3.5 and all amendments thereto;

(iv) Assignments of certificates of membership interest or other documents of transfer to be delivered pursuant to Section 3.5 or in connection with the purchase of a Membership Interest pursuant to Section 3.5, Section 7.7 or Article VIII;

(v) Any other instrument or document that may be reasonably required by the Managers in connection with any of the foregoing or to reflect any reduction in the Member's Capital Account or Percentage Interest pursuant to Section 3.5; and

(vi) Any consent to the representation of the Company by counsel selected by the Managers as described in Section 13.1.

B. Irrevocable Power. The special power granted in Section 13.22A: (i) is irrevocable, (ii) is coupled with an

interest, and (iii) shall survive a Member's death, incapacity or dissolution.

C. Signatures. The Managers may exercise the special power of attorney granted in Section 13.22A by a facsimile signature of any Manager or one of their officers or by signature of any Manager or one of their officers.

IN WITNESS WHEREOF, all of the Members of PCA Alloy LLC, a California limited liability company, have executed this Agreement, effective as of the date written above.


DATED: December 30, 1997

MEMBER:

  
Steven P. Kelley

DATED: December 30, 1997

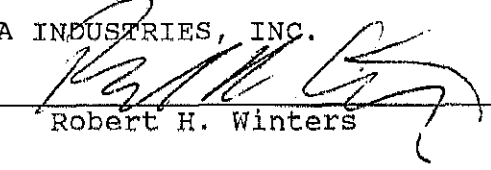
MEMBER:

  
Robert H. Winters

DATED: December 30, 1997

PCA INDUSTRIES, INC.

By

  
Robert H. Winters

### CONSENT OF SPOUSE

The undersigned spouse(s) of the party (parties) to the foregoing Agreement acknowledge(s) on his or her own behalf that: I have read the foregoing Agreement and I know its contents. I am aware that by its provision my spouse grants the Company and/or the other Members an option to purchase all of his or her Membership Interest, including my community interest in them. I hereby consent to the sale, approve of the provisions of the Agreement, and agree that such Membership Interest and my interest in them are subject to the provisions of the Agreement and that I will take no action at any time to hinder operation of the Agreement on such Membership Interest or my interest in them.

DATED: December 30, 1997

Corynne Winters

# CONSENT OF SPOUSE

The undersigned spouse(s) of the party (parties) to the foregoing Agreement acknowledge(s) on his or her own behalf that: I have read the foregoing Agreement and I know its contents. I am aware that by its provision my spouse grants the Company and/or the other Members an option to purchase all of his or her Membership Interest, including my community interest in them. I hereby consent to the sale, approve of the provisions of the Agreement, and agree that such Membership Interest and my interest in them are subject to the provisions of the Agreement and that I will take no action at any time to hinder operation of the Agreement on such Membership Interest or my interest in them.

DATED: December 30, 1997

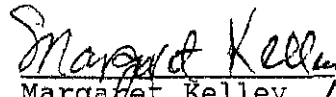
  
Margaret Kelley /



EXHIBIT A

CAPITAL CONTRIBUTION OF MEMBER AND ADDRESSES OF MEMBERS  
AND MANAGERS AS OF PCA ALLOY LLC

<u>Member's Name</u>	<u>Member's Address</u>	<u>Member's Capital Contribution</u>	<u>Member's Percentage Interest</u>
Robert H. Winters	PRVY-Controlled/Privacy		PRVY-Controlled/Privacy
Steven P. Kelley			
PCA Industries, Inc.	1818 Rosslynn Ave. Fullerton, CA 92831		50%
		\$ _____	<u>100%</u>
<u>Manager's Name and Address</u>			
Robert H. Winters	PRVY-Controlled/Privacy		
Steven P. Kelley			
Philip Friedrich			
Peter Gilbert	610 West End Avenue New York, NY 10024		
Tony Rezzuti	PRVY-Controlled/Privacy		

# Exhibit D-3



State of California  
Bill Jones  
Secretary of State

LIMITED LIABILITY COMPANY  
CERTIFICATE OF AMENDMENT

LLC-2

**IMPORTANT** - Read the instructions before completing the form.  
This document is presented for filing pursuant to Section 17050 of the California Corporations Code.

1. Limited Liability company name:

PCA ALLOY LLC

2. File number:

101997364026

3. Enter only the information in the Articles of Organization (LLC-1) amended by filing this Certificate of Amendment (LLC-2).

a. Limited liability company name: PACIFIC COAST ALLOY LLC

b. Latest date on which the limited liability company is to dissolve: (month/day/year) \_\_\_\_\_

c. The limited liability company will be managed by: (check one).

☐ one manager

☐ more than one manager

☐ limited liability company members

d. Any change in the events that will cause dissolution of the limited liability company. Provide the text of the amendment adopted, using the space provided and/or attaching one or more separate pages.

4. Number of pages attached, if any:

0

For Secretary of State Use

5. It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

Signature of authorized person

Robert H. Winters, Sr., Managing Member

Type or print name and title as President of  
PCA Industries Inc.

Date: March 18, 19 98

**FILED**  
In the office of the Secretary of State  
of the State of California

**MAR 26 1998**

BILL JONES, Secretary of State

LLC-1

Approved by the Secretary of State

Filing Fee \$30

995

WINEPA001363

# Exhibit D-4

OPERATING AGREEMENT  
FOR  
PACIFIC COAST ALLOY, LLC  
A CALIFORNIA LIMITED LIABILITY COMPANY

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS WHICH ARE SET FORTH HEREIN.

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OPERATING AGREEMENT  
FOR  
PACIFIC COAST ALLOY, LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY

This OPERATING AGREEMENT FOR PACIFIC COAST ALLOY, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (hereinafter referred to as "Agreement") is made and effective as of December 30, 1997, by and between PCA Industries Inc., a California corporation ("PCA Industries"), and Wheel Components, a California corporation ("Wheel Components"). PCA Industries and Wheel Components are hereinafter sometimes collectively referred to as the "Members," or individually as a "Member." The Agreement is made with reference to the following facts:

A. On or about December 30, 1997, ARTICLES OF ORGANIZATION FOR PACIFIC COAST ALLOY LLC, A LIMITED LIABILITY COMPANY under the laws of the State of California, were filed with the California Secretary of State.

B. PCA Industries and Wheel Components desire hereby to enter into, adopt and approve an operating agreement for Pacific Coast Alloy, LLC, a California Limited Liability Company (hereinafter referred to as the "Company"), which will govern their respective rights, duties and obligations concerning the management, ownership and operation of the Company.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PCA Industries and Wheel Components hereby set forth the terms of the operating agreement for the Company, which terms shall be subject to and construed under the laws of the State of California.

ARTICLE I

DEFINITIONS

When used in the Agreement, the following terms shall have the meanings set forth below (any and all terms used in the Agreement that are not defined in this Article I shall have the meanings attributed thereto which are set forth elsewhere in the Agreement):

1.1 "Act" shall mean the Beverly-Killea Limited Liability Company Act, codified in the California Corporations Code, Section 17000 et seq., as the same may be amended from time to time.

1.2 "Affiliate" shall mean any individual, partnership, corporation, limited liability company (other than the Company), trust or other entity or association, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with one or both

Members. The term "control," as used in the immediately preceding sentence, means, with respect to a corporation or limited liability company, the right to exercise, directly or indirectly, more than ten percent (10%) of the voting rights attributable to the such corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, possession, directly or indirectly, of the power to direct or cause the direction of the management or policies thereof, whether through the ownership of voting rights, by contract, or otherwise.

1.3 "Agreement" shall mean this OPERATING AGREEMENT FOR PACIFIC COAST ALLOY, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, as originally executed, and as it may be amended from time to time.

1.4 "Articles" shall mean the Articles of Organization for the Company originally filed with the California Secretary of State, and as it may be amended from time to time. A copy of the Articles originally filed with the California Secretary of State is attached hereto as Exhibit "A." A copy of an amendment to the Articles originally filed with the California Secretary of State is attached hereto as Exhibit "B."

1.5 "Assignee" means a Person who has acquired a Member's Economic Interest in the Company, by way of a Transfer, but who has not become a Member.

1.6 "Assigning Member" means a Member who, by means of a Transfer, has transferred an Economic Interest in the Company to an Assignee.

1.7 "Bankruptcy" shall mean: (a) the filing of an application by a Member for, or its consent to, the appointment of a trustee, receiver, or custodian of its assets; (b) the entry of an order for relief with respect to a Member in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the making by a Member of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, conservator or custodian of the assets of a Member unless the proceedings and the person appointed are dismissed within ninety (90) days; or (e) the failure by a Member generally to pay its debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing by a Member of its inability to pay its debts as they become due.

1.8 "Capital Account" shall mean with respect to any Member the capital account which the Company establishes and maintains for such Member pursuant to Section 3.3 of the Agreement.

1.9 "Capital Contribution" shall mean the total value of cash and fair market value of property (including promissory notes or other obligation to contribute cash or property) contributed to the Company and/or services rendered or to be rendered as a contribution to the Company by or on behalf of a Member.

1.21 "Fair Market Value" means, with respect to any item of property of the Company, the item's adjusted basis for federal income tax purposes, except as follows:

(a) The Fair Market Value of any property contributed by a Member to the Company shall be the value of such property, as mutually agreed by the contributing Member and the Company;

(b) The Fair Market Value of any item of Company property distributed to any Member shall be the value of such item of property on the date of distribution, as mutually agreed by the recipient of such distribution and the Company; and

(c) Fair Market Value for purposes of Article VIII, Section 8.3 shall be as determined under that section.

1.22 "Fiscal Year" shall mean the Company's fiscal year for accounting and tax purposes, which shall be the calendar year.

1.23 "Former Member" shall mean a Member whose actions or conduct resulted in a Dissolution Event.

1.24 "Former Member's Interest" shall mean the Membership Interest of a Former Member.

1.25 "Initial Members" shall mean PCA Industries and Wheel Components. A reference to an "Initial Member" means either of the Initial Members.

1.26. "Involuntary Transfer" means, with respect to any Membership Interest, or any element thereof, any involuntary Transfer or Encumbrance, whether by operation of law, pursuant to court order, foreclosure of a security interest, execution of a judgment or other legal process, or otherwise, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors.

1.27 "Member" shall mean, in addition to the Initial Members, each Person who hereafter has been admitted to the Company as a Member or is an Assignee who becomes a Member, unless and until such time as he/she/it resigns, withdrawn, is expelled or, if other than an individual, is dissolved.

1.28 "Member Nonrecourse Debt" shall have the meaning ascribed to the term "Partner Nonrecourse Debt" in the Regulations.

1.29 "Member Nonrecourse Deductions" shall mean items of Company loss, deduction, or expenditures which are attributable to Member Nonrecourse Debt.

1.10 "Capital Event" means a sale or disposition of any of the Company's capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of Company property, or a similar event with respect to Company property or assets.

1.11 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

1.12 "Company" shall mean PACIFIC COAST ALLOY, LLC, a California limited liability company.

1.13 "Company Minimum Gain" shall have the meaning ascribed to the term "Partnership Minimum Gain" in the Regulations.

1.14 "Corporations Code" shall mean the California Corporations Code, as amended from time to time, and the provisions of succeeding law.

1.15 "Dissolution Event" shall mean with respect to any Member one or more of the following: the withdrawal, Bankruptcy, dissolution (other than a technical termination under the Code) or occurrence of any other event which terminates the continued membership of any Member.

1.16 "Distributable Cash" shall mean the amount of cash in the possession or control of the Company which PCA Industries, after consulting with Wheel Components, deems available for distribution to the Members, taking into account all Company debts, liabilities, and obligations of the Company then due and amounts which PCA Industries deems necessary to place into reserves for customary and usual claims with respect to the Company's business.

1.17 "Economic Interest" shall mean the share of a Member or Economic Interest Owner, as the case may be, in the Company's Net Profits, Net Losses, and distributions of the Company's assets pursuant to the Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company, or except as provided in Section 17106 of the Corporations Code, any right to information concerning the business and affairs of Company.

1.18 "Economic Interest Owner" shall mean the owner of an Economic Interest who is not a Member.

1.19 "Encumber" means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.20 "Encumbrance" means, with respect to any Membership Interest or Economic Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in the Agreement), option, or preferential right to purchase.

1.30 "Membership Interest" shall mean a Member's entire interest in the Company, including, but not limited to, the Member's Economic Interest, right to vote on or participate in the management, and right to receive information concerning the business and affairs of the Company.

1.31 "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions, and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with accounting principles employed under the method of accounting at the close of each fiscal year on the Company's information tax return filed for federal income tax purposes.

1.32 "Nonrecourse Liability" shall have the meaning set forth in the Regulations.

1.33 "Notice" means a written notice required or permitted under the Agreement. A notice shall be deemed given or sent (a) when deposited, as certified mail or for overnight delivery, postage and fees prepaid, in the United States mails; (b) when delivered to Federal Express, United Parcel Service, DHL WorldWide Express, or Airborne Express, for overnight delivery, charges prepaid or charged to the sender's account; (c) when personally delivered to the recipient; (d) when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or (e) when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.

1.34 "Percentage Interest" shall mean a fraction, expressed as a percentage, the numerator of which is the total of a Member's Capital Account and the denominator of which is the total of all Capital Accounts of all Members, as such percentage may be adjusted from time to time pursuant to the terms of the Agreement. Percentage Interests shall be determined annually, unless otherwise provided herein, in accordance with the relative proportions of the Capital Accounts of the Members, effective as of the first day of the Company's Fiscal Year but with all contributions and distributions under the Agreement to be deemed to have occurred on such day immediately prior to determination of the Percentage Interest of a Member.

1.35 "Person" shall mean an individual, general partnership, limited partnership, limited liability company, corporation, trust, estate, real estate investment trust association or any other entity, whether foreign or domestic.

1.36 "Proxy" has the meaning set forth in the California Corporations Code as applicable to the Company. A Proxy may not be transmitted orally.

1.37 "Regulations" shall, unless the context clearly indicates otherwise, mean the regulations currently in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.



1.38 "Remaining Member(s)" shall mean a Person who, prior to a Dissolution Event was a Member, and who remains a Member upon the occurrence of a Dissolution Event.

1.39 "Tax Matters Partner" shall be PCA Industries or its successor, as designated pursuant to Section 9.8.

1.40 "Transfer" means, with respect to a Membership Interest, or any element of a Membership Interest, any sale, assignment, gift, Involuntary Transfer, or other disposition of a Membership Interest or any element of such a Membership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under the Agreement.

## ARTICLE II

### ORGANIZATIONAL MATTERS

2.1 Formation. Pursuant to the Act, the Members have formed a California limited liability company under the laws of the State of California by causing the filing of the Articles with the California Secretary of State and entering into the Agreement. The rights and liabilities of the Members shall be determined pursuant to the Act and the Agreement. To the extent that rights or obligations of any Member are different by reason of any provision of the Agreement than they would be in the absence of such provision, the Agreement shall control to the extent permitted by the Act.

2.2 Name. The name of the Company shall be "PACIFIC COAST ALLOY, LLC." The business of the Company may be conducted under that name or, upon compliance with applicable laws, any other name that the Members deem appropriate or advisable. PCA Industries shall file any fictitious name certificates and similar filings, and any amendment thereto, that PCA Industries considers appropriate or advisable.

2.3 Term. The term of the Agreement shall be co-terminus with the period duration of the Company provided in the Articles, unless extended or sooner terminated as hereinafter provided.

2.4 Office and Agent. The Company shall continuously maintain an office and registered agent in the State of California as required by the Act. The principal office of the Company shall be located at 1818 East Rosslyn Avenue, Fullerton, California 92631, or such other address as PCA Industries may determine. The Company also may have such other office(s), anywhere within and without the State of California, as PCA Industries from time to time may determine, or the business of the Company may require. The registered agent shall be as stated in the Articles or as otherwise determined by PCA Industries.

2.5 Addresses of the Members. The respective addresses of the Members are set forth on Exhibit "C".

2.6 Purpose of Company. The purpose of the Company is to engage in any lawful activity for which a limited liability company may be organized under the Act.

2.7 Management of Company. The Members shall be the managers of the Company.

### ARTICLE III

#### CAPITAL CONTRIBUTIONS

3.1 Initial Capital Contributions. The Members shall contribute to the Company the property described in Exhibit "D" attached hereto and made a part hereof. The Fair Market Value of the contributed property (net of any and all monetary liens and encumbrances to which such property is subject on the date of contribution to the Company, if any) has been agreed to among the Company, PCA Industries and Wheel Components. Additionally, PCA Industries has paid certain expenses in connection with the acquisition of the Property by PCA Industries, and is obligated to pay additional expenses in connection with the formation of the Company, for which PCA Industries shall be deemed to have made an additional initial Capital Contribution of the amount set forth on Exhibit "C" shall be revised to reflect any additional Capital Contributions in accordance with Section 3.2.

3.2 Additional Capital Contributions. Except as otherwise provided in the Agreement, no Member shall be required to make any additional Capital Contributions. To the extent unanimously approved by the Members who hold a Majority Interest, from time to time, the Members may be permitted to make additional Capital Contributions if and to the extent they so desire, and if the Members who hold a Majority Interest determine that such additional Capital Contributions are necessary or appropriate for the conduct of the Company's business, including without limitation, expansion or diversification. In that event, the Members shall have the opportunity, but not the obligation, to participate in such additional Capital Contributions on a pro rata basis in accordance with their Percentage Interests. Immediately following such Capital Contributions, the Percentage Interests shall be adjusted by to reflect the new relative proportions of the Capital Accounts of the Members.

3.3 Capital Accounts. The Company shall establish an individual Capital Account for each Member. The Company shall determine and maintain each Capital Account in accordance with the Code and Regulations. If a Member transfers all or a part of its Membership Interest in accordance with the Agreement, such Member's Capital Account attributable to the transferred Membership Interest shall carry over to the new owner of such Membership Interest pursuant to Regulations Section 1.704-1(b)(2)(iv)(1).

3.4 No Interest. No Member shall be entitled to receive any interest on its Capital Contributions.

3.5 Failure to Make Contributions. If a Member does not timely contribute capital when required, that Member shall be in default under the Agreement. In such event, the non-defaulting Member(s) shall send the defaulting Member written notice of such default, giving him/her/it fourteen (14) days from the date such notice is given to contribute the entire amount of its required capital contribution. If the defaulting Member does not contribute its required capital to the Company within said fourteen (14)-day period, the non-defaulting Member(s) who hold a majority of the Percentage Interests held by all non- defaulting Members may elect any one or more of the following remedies:

A. The non-defaulting Members may advance funds to the Company to cover those amounts which the defaulting Member fails to contribute. Amounts which a non defaulting Member so advances on behalf of the defaulting Member shall become a loan due and owing from the defaulting Member to such non-defaulting Member and bear interest at the rate of ten percent (10%) per annum, payable monthly. All cash distributions otherwise distributable to the defaulting Member under the Agreement shall instead be paid to the non-defaulting Member(s) making such advances until such advances and interest thereon are paid in full. In any event, any such advances shall be evidenced by a promissory note in the form of Exhibit "E" and be due and payable by the defaulting Member one (1) year from the date that such advance was made. Any amounts repaid shall first be applied to interest and thereafter to principal. Effective upon a Member becoming a defaulting Member, each Member grants to the non-defaulting Member(s) who advance funds under this Section 3.5(a) a security interest in such defaulting Member's Economic Interest to secure its obligation to repay such advances and agrees to execute and deliver a promissory note as described herein together with a security agreement in the form of Exhibit "F" and such UCC-1 financing statements and assignments of certificates of membership (or other documents of transfer) as such non-defaulting Member(s) may reasonably request.

B. The Percentage Interests shall be adjusted, in which event each Member's Percentage Interest shall be a fraction, the numerator of which represents the amount of such Member's Capital Account and the denominator of which represents the sum of all Members' Capital Accounts.

C. The non-defaulting Member(s) may dissolve the Company, such election to be made by a majority of the Percentage Interests held by all non-defaulting Members, in which event the Company shall be wound-up, liquidated and terminated pursuant to Article X.

D. The Company or the non-defaulting Member(s) may purchase the defaulting Member's entire Membership Interest in accordance with the same terms and conditions as those set forth in Article VIII, except that the purchase price shall be an amount equal to eighty percent (80%) of the purchase price determined in accordance with Section 8.3.

E. The defaulting Members shall have no right to receive any distributions from the Company until the non-defaulting Member(s) has/have first received distributions in an amount

equal to the additional capital contributed by each non-defaulting Member to the Company plus a cumulative, non-compounded return thereon at the rate of ten percent (10%) per annum.

F. The defaulting Member shall lose its voting and approval rights under the Act and the Agreement until such time as the defaulting Member cures the default.

G. The defaulting Member shall lose its ability in all capacities to actively participate in the management and operations of the Company until such time as the defaulting Member cures the default.

H. If the defaulting Member does not make a required contribution of property or services, the Company may require the defaulting Member to contribute cash equal to that portion of the fair market value of the contribution that has not been made. This remedy is in addition to, and not in lieu of any other rights, including the right to specific performance, the remedies listed above in this Section 3.5, or any other rights of the Company or its Members under applicable law.

Each Member acknowledges and agrees that the remedies described in this Section 3.5 bear a reasonable relationship to the damages which the Members estimate may be suffered by the Company and the non-defaulting Member(s) by reason of the failure of a defaulting Member to make an additional Capital Contribution and the election of any or all of the above described remedies is not unreasonable under the circumstances existing as of the date hereof.

The election of the non-defaulting Member(s) to pursue any remedy provided in this Section 3.5 shall not be a waiver or limitation of the right to pursue an additional or different remedy available hereunder or of law or equity with respect to any subsequent default.

## ARTICLE IV

### MEMBERS

4.1 Limited Liability. Except as required under the Act or as expressly set forth in the Agreement, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise.

4.2 Admission of Additional Members. With the approval of both Members, the Company may admit additional Members. Any additional Members shall obtain Membership Interests and will participate in the management, Net Profits, Net Losses, and distributions of the Company on such terms as are determined and approved by the Members. Notwithstanding the foregoing, substitute members may only be admitted in accordance with Article VII.

4.3 Withdrawals or Resignations. Neither Member may withdraw or resign as a Member.

4.4 Termination of Membership Interest. Upon the transfer of a Member's Membership Interest in violation of the Agreement, or the occurrence of a Dissolution Event as to such Member which does not result in the dissolution of the Company, the Membership Interest of a Member shall be purchased by the Company or the remaining Member as provided herein. Each Member acknowledges and agrees that such purchase of a Membership Interest upon the occurrence of any of the foregoing events is not unreasonable under the circumstances existing as of the date hereof.

4.5 Transactions With The Company. Subject to any limitations set forth in the Agreement and with the prior approval of the other Member after full disclosure of the Member's involvement, a Member may lend money to and transact other business with the Company. Subject to other applicable law, such Member has the same rights and obligations with respect thereto as a Person who is not a Member.

4.6 Remuneration To Members. Except as otherwise authorized in, or pursuant to, the Agreement, no Member is entitled to remuneration or compensation for acting in the Company business, subject to the entitlement of a Member winding up the affairs of the Company to reasonable compensation pursuant to Section 10.3.

4.7 Members Are Not Agents. Pursuant to Section 5.1 and the Articles, the management of the Company is vested jointly in the Members. No Member, acting solely in the capacity of a Member, is an agent of the Company nor can any Member in such capacity bind nor execute any instrument on behalf of the Company, except to the extent otherwise set forth in the Agreement.

4.8 Voting Rights. Except as expressly provided in the Agreement or the Articles, Members shall have no voting, approval or consent rights. The following matters shall require the unanimous vote, approval or consent of the Members who are not the subject of a Dissolution Event or an assignor of a Membership Interest who is not a Member:

- A. A decision to continue the business of the Company after the occurrence of a Dissolution Event;
- B. Except as provided in Section 7.4, the transfer of a Membership Interest and admission of the assignee as a Member of the Company;
- C. Any amendment of the Articles or the Agreement; and
- D. A decision to compromise the obligation of a Member to make a Capital Contribution or return money or property paid or distributed in violation of the Act.
- E. Section 3.2 on additional Capital Contributions;
- F. Section 4.2 on admission of new Members; and

G. Section 10.1 on dissolving the Company.

4.9 Proxies. A Member entitled to vote on any matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the Company. A proxy shall be deemed signed if the Member's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission, electronic transmission or otherwise) by the Member or the Member's attorney in fact. A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the Member or the Member's attorney in fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless revoked by the person executing it, before the vote pursuant to that proxy, by a writing delivered to the Company stating that the proxy is revoked, or by a subsequent proxy executed by, or attendance at the meeting and voting in person by, the person executing the proxy; provided, however, that no proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Corporations Code Sections 705(e) and 705(f).

## ARTICLE V

### MANAGEMENT AND CONTROL OF THE COMPANY

5.1 Management of the Company by Members. Except as otherwise provided in the Agreement, the business of the Company shall be managed by all of the Members. A Member shall be a manager only during the time the Member is a Member of the Company.

5.2. Meetings of Members. The Members are not required to hold meetings, and, where applicable, decisions may be reached through one or more informal consultations between the Members or by a written consent signed by the Members. In the event that Members wish to hold a formal meeting (a "Meeting") for any reason, the following procedures shall apply:

A. Any Member may call a Meeting of the Members by giving Notice of the time and place of the Meeting at least 48 hours prior to the time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Company;

B. Both Members shall constitute a quorum for the transaction of business at any Meeting of the Members;

C. The transactions of the Members at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if a quorum is present;

D. Any action required or permitted to be taken by the Members under the Agreement may be taken without a Meeting if both Members individually or collectively consent in writing to such action;

E. Members may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that Members participating in the Meeting can hear one another; and

F. Members shall keep or cause to be kept with the books and records of the Company full and accurate minutes of all Meetings, Notices, and waivers of Notices of Meetings, and all written consents in lieu of Meetings.

5.3. Members' Compensation. Members as such shall not be entitled to compensation for their services.

5.4. Designation of Officers. At the sole discretion of the Members, the Company may have a President, who may, but need not be a Member, and may provide for additional officers of the Company and for their election, and may alter the powers, duties, and compensation of the President and of all other officers. If not a Member, the President, if there is one, shall attend any meetings of Members.

5.5. Ownership of Assets. All assets of the Company, whether real or personal, shall be held in the name of the Company.

5.6. Bank Accounts. All funds of the Company shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Company, at such locations as shall be determined by the Members. Withdrawal from such accounts shall require the signature of such person or persons as the Members may designate.

5.7. Day-to-Day Operations. The day-to-day operations and responsibilities of the Company shall be conducted and carried on by \_\_\_\_\_, in consultation with \_\_\_\_\_. In amplification and not limitation of the foregoing, \_\_\_\_\_ shall perform the following, subject to any voting rights of \_\_\_\_\_:

A. Carry on the day-to-day business of the Company;

B. Supervise the furnishing of all goods and services provided to the Company, including subcontracting services;

C. Prepare such schedules, budgets, and reports as the Company's lender(s) may reasonably request from time to time. Attached hereto as Exhibit "G" is a copy of the operating budget prepared by \_\_\_\_\_. \_\_\_\_\_ shall not, without the express written permission

of \_\_\_\_\_, obligate the Company to pay more for any particular budgeted item than is shown therefor on the budget;

D. Negotiate and prepare agreements between the Company and those persons, firms or entities providing goods and/or services to the Company, excluding loan packages and applications, and furnish such supporting documentation and information as may be reasonably requested in connection therewith;

E. Obtain or cause to be obtained for the Company reasonable and necessary insurance, including, without limitation, a public liability insurance policy in an amount of not less than \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), naming the Company as the primary insured (the cost of such insurance being a Company expense) and each Member as an additional insured, and all other bonds and insurance which may be required by any lender(s) or which is reasonable and prudent under the circumstances; and

F. Handle and perform any and all warranty items associated with the the business of the Company and the payment of all costs in connection therewith, at the expense of the Company.

Except as otherwise provided in the Agreement, \_\_\_\_\_ shall not be compensated for performing such duties.

5.8 Other Business Affairs. All responsibility for arranging financing for the business and affairs of the Company shall be that of the Members jointly, provided, that \_\_\_\_\_ shall have primary responsibility for face-to-face contact and negotiations. In amplification and not limitation of the of the foregoing, \_\_\_\_\_ shall perform the following, subject to right of \_\_\_\_\_ to consent or approve the same:

A. Arrange to borrow money on behalf of the Company and to encumber any and all of the assets of the Company;

B. Prepay in whole or in part, refinance, modify or extend any monetary obligation of the Company;

C. Employ, from time to time, and at the expense of the Company, attorneys as independent contractors;

D. Pay all organizational and formation expenses incurred in the creation of the Company;

E. Arrange marketing services for the Company;



F. Arrange for the sale, exchange or other disposition of the Company's assets occurring as part of a single transaction or plan, or in multiple transactions;

G. Transactions between the Company and one or more of Affiliates of a Member; and

H. Any other transaction described in the Agreement as requiring the vote, consent, or approval of the Members.

5.9 Devotion of Time. Each Member shall devote such time to the Company as is necessary to carry out the provisions of the Agreement. The Members shall devote whatever time, effort, and skill as is appropriate for the operation of the Company.

5.10 Members Have No Managerial Authority. The Members shall have no power to participate in the management of the Company except as expressly authorized by the Agreement or the Articles and except as expressly required by the Act. Unless expressly and duly authorized in writing to do so by a Member, no Member shall have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, or to render it liable for any purpose.

5.11 Performance of Duties: Liability of Members. Except as otherwise provided in the Agreement, a Member shall not be liable to the Company or to the other Member for any loss or damage sustained by the Company or the other Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, reckless or intentional misconduct, or a knowing violation of law by such Member perpetrated against the Company or such Member. The Members shall perform their managerial duties in good faith, in a manner they reasonably believe to be in the best interests of the Company and its Members, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. A Member who so performs its duties shall not have any liability by reason of being or having done so. In performing their duties, the Members shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, of the following persons or groups unless they have knowledge concerning the matter in question that would cause such reliance to be unwarranted and provided that the Members act in good faith and after reasonable inquiry when the need therefor is indicated by the circumstances:

A. One or more officers, employees or other agents of the Company whom the Members reasonably believe to be reliable and competent in the matters presented; or

B. Any attorney, independent accountant, or other person as to matters which the Members reasonably believe to be within such person's professional or expert competence.

5.12 Competing Activities. Each Member acknowledges that the other Member and its Affiliates own and/or manage other businesses, including businesses that may compete with the

Company and for the Members' time. Notwithstanding the foregoing, the Members shall be obligated to present any investment opportunity or prospective economic advantage to the Company if the opportunity is of the character that, if presented to the Company, could be taken by the Company. Except as otherwise set forth in the Agreement, the Members and, to the extent applicable, their respective officers, directors, shareholders, partners, members, managers, agents, employees and Affiliates may engage or invest in, independently or with others, any business activity of any type or description, including without limitation those that might be the same as or similar to the Company's business and that might be in direct or indirect competition with the Company. Except as otherwise provided in the Agreement, neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. Subject to the foregoing, the Members shall have the right to hold any investment opportunity or prospective economic advantage for their own account or to recommend such opportunity to Persons other than the Company.

5.13 Transactions between the Company and the Members. Notwithstanding that it may constitute a conflict of interest, and except as otherwise provided in the Agreement, each Member may, and may cause its Affiliates to, engage in any transaction (including, without limitation, the purchase, sale, lease, or exchange of any property or the rendering of any service, or the establishment of any salary, other compensation, or other terms of employment) with the Company so long as such transaction is not expressly prohibited by the Agreement and so long as the terms and conditions of such transaction, on an overall basis, are fair and reasonable to the Company and are at least as favorable to the Company as those that are generally available from Persons capable of similarly performing them and in similar transactions between parties operating at arm's length, and provided that the other Member affirmatively votes or consents in writing to approve the transaction. A transaction between a Member and/or its Affiliate(s), on the one hand, and the Company, on the other hand, shall be conclusively determined to constitute a transaction on terms and conditions, on an overall basis, fair and reasonable to the Company and at least as favorable to the Company as those generally available in a similar transaction between parties operating at arm's length if the other Member affirmatively votes or consents in writing to approve the transaction. Notwithstanding the foregoing, each Member shall have an obligation, in connection with any such transaction between the Company and such Member or an Affiliate of such Member, to seek the consent of the other Member.

5.14 Payments to Members. Except as specified in the Agreement, no Member or Affiliate of a Member is entitled to remuneration for services rendered or good provided to the Company. The Members and their Affiliates shall receive only the following payments:

A. The Company shall pay the Members or Affiliates of the Members for services rendered or goods provided to the Company to the extent that the Members are not required to render such services or goods themselves without charge to the Company, and to the extent that the fees paid to such Members or Affiliates do not exceed the fees that would be payable to an independent responsible third-party that is willing to perform such services or provide such goods.

B. The Company shall reimburse the Members and their Affiliates for the actual cost of goods and materials used for or by the Company. The Company shall also pay or reimburse the Members or their Affiliates for organizational expenses (including, without limitation, legal and accounting fees and costs) incurred to form the Company and prepare the Articles and the Agreement. Except as otherwise provided herein, the Members and their Affiliates shall not be reimbursed by the Company for the following expenses: (i) salaries, compensation or fringe benefits of directors, officers or employees of the Members or their Affiliates; (ii) overhead expenses of the Members or their Affiliates, including, without limitation, rent and general office expenses; and (iii) the cost of providing any service or goods for which the Members or their Affiliates are entitled to compensation under the Agreement.

5.15 Authority to Sign on Behalf of the Company. Except as otherwise provided in the Agreement, any note, mortgage, evidence of indebtedness, contract for the sale of the Company's assets, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between the Company and any other person, must be signed by both Members.

5.16 Signing Authority of Members. Subject to any restrictions imposed by the Members, any Member, acting alone, is authorized to endorse checks, drafts, and other evidences of indebtedness made payable to the order of the Company, but only for the purpose of deposit into the Company's accounts. All checks, drafts, and other instruments obligating the Company to pay money may be signed by any one Member acting alone. Both Members acting together, shall be authorized to sign contracts and obligations on behalf of the Company.

## ARTICLE VI

### ALLOCATIONS OF NET PROFITS AND NET LOSSES AND DISTRIBUTIONS

6.1. Distributions. Except as otherwise provided, the Net Profits and Net Losses of the Company and all items of Company income, gain, loss, deduction, or credit shall be allocated, for Company book purposes and for tax purposes, to a Member in accordance with such Member's Profit Percentage Interest. The Company shall distribute any cash flow generated from a sale of all or substantially all of the assets of the Company or the financing or refinancing of debt secured by the Company's property, less all reasonable amounts of reserved cash as may be necessary or advisable for working capital and other contingencies, in the following order of priority:

A. To the payment of the costs of such sale or refinancing;

B. Thereafter, to the discharge of any debts and obligations of the Company, including, without limitation, indebtedness to any Member;

C. Thereafter, to the return pro rata of the Members' Capital Contribution to the Company;

D. Thereafter, to the return pro rata of the Members' Net Profits credited to their respective Capital Accounts which have not yet been previously distributed;

E. Thereafter, pro rata, to the Members in accordance with their Profit Percentage Interests.

6.2 Allocation of Net Profits. Net Profits shall be allocated in the following order of priority:

A. To the Members to the extent that Net Losses were previously allocated to them which have not been recouped; and

B. Thereafter, to the Members pro rata in accordance with their Profit Percentage Interests.

6.3 Allocation of Net Losses. Net Losses shall be allocated in the following order of priority:

A. To the Members pro rata in accordance with the credit balance of their respective Capital Accounts; and

B. Thereafter, to the Members in accordance with their respective Profit Percentage Interests, which shall be debited to their respective Capital Accounts.

6.4 Adjustments. If any Member unexpectedly receives any adjustment, allocation, or distribution described in the Regulations, items of Company gross income and gain shall be specially allocated to that Member in an amount and manner sufficient to eliminate any deficit balance in the Member's Capital Account created by such adjustment, allocation, or distribution as quickly as possible. Any special allocation under this Section 6.4 shall be taken into account in computing subsequent allocations of Net Profits and Net Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 6.4 and the other provisions of the Agreement relating to the maintenance of Capital Accounts are intended to comply with the Regulations and shall be interpreted and applied in a manner consistent with such Regulations.

6.5 Unrealized Appreciation. Any unrealized appreciation or unrealized depreciation in the values of Company property distributed in kind to all the Members shall be deemed to be Net Profits or Net Losses realized by the Company immediately prior to the distribution of the property

and such Net Profits or Net Losses shall be allocated to the Members' Capital Accounts in the same proportions as Net Profits are allocated under Section 6.2. Any property so distributed shall be treated as a distribution to the Members to the extent of the Fair Market Value of the property less the amount of any liability secured by and related to the property. Nothing contained in the Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 6.5, "unrealized appreciation" or "unrealized depreciation" shall mean the difference between the Fair Market Value of such property and the Company's basis for such property.

6.6. Transfer of Economic Interest. In the case of a Transfer of an Economic Interest during any fiscal year, the Assigning Member and Assignee shall each be allocated the Economic Interest's share of Net Profits or Net Losses based on the number of days each held the Economic Interest during that fiscal year.

6.7. Capital Event. Except as otherwise set forth herein, all cash resulting from the day-to-day business operations of the Company and from a sale or disposition of any of the Company's capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of Company property, or a similar event with respect to Company property or assets shall be distributed among the Members in proportion to their Percentage Interests at such times as the Members may agree.

6.8. Non-cash Proceeds. If the proceeds from a sale or other disposition of a Company asset consist of property other than cash, the value of such property shall be as determined by the Members. Such non-cash proceeds shall then be allocated among all the Members in proportion to their Percentage Interests. If such non-cash proceeds are subsequently reduced to cash, such cash shall be distributed to each Member in accordance with Section 6.7.

6.9. Distribution in Liquidation. Notwithstanding any other provisions of the Agreement to the contrary, when there is a distribution in liquidation of the Company, or when any Member's interest is liquidated, all items of income and loss first shall be allocated to the Members' Capital Accounts under this Article IV, and other credits and deductions to the Members' Capital Accounts shall be made before the final distribution is made. The final distribution to the Members shall be made to the Members to the extent of and in proportion to their positive Capital Account balances.

6.10. Form of Distribution. A Member, regardless of the nature of the Member's Capital Contribution, has no right to demand and receive any distribution from the Company in any form other than money. No Member may be compelled to accept from the Company a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Members. Except upon a dissolution and the winding up of the Company, no Member may be compelled to accept a distribution of any asset in kind.

## ARTICLE VII

### TRANSFER AND ASSIGNMENT OF INTERESTS

7.1 Transfer and Assignment of Interest. No Member shall be entitled to transfer, assign, convey, sell, encumber or in any way alienate all or any part of its Membership Interest except with the prior written consent of all of the other Member, which consent may be given or withheld, conditioned or delayed (as allowed by the Agreement or the Act), as the other Member may determine in its sole discretion. Transfers in violation of this Article VII shall only be effective to the extent set forth in Section 7.7. After the consummation of any transfer of any part of a Membership Interest, the Membership Interest so transferred shall continue to be subject to the terms and provisions of the Agreement and any further transfers shall be required to comply with all the terms and provisions of the Agreement.

7.2 Further Restrictions on Transfer of Interests. In addition to other restrictions found in the Agreement, no Member shall transfer, assign, convey, sell, encumber or in any way alienate all or any part of its Membership Interest: (i) without compliance with Section 12.10, and (ii) if the Membership Interest to be transferred, assigned, sold or exchanged, when added to the total of all other Membership Interests sold or exchanged in the preceding twelve (12) consecutive months prior thereto, would cause the termination of the Company under the Code.

7.3 Substitution of Members. A transferee of a Membership Interest shall have the right to become a substitute Member only if (i) the requirements of Sections 7.1 and 7.2 relating to unanimous consent of Members, securities and tax requirements hereof are met, (ii) such Person executes an instrument satisfactory to the Member(s) accepting and adopting the terms and provisions of the Agreement, and (iii) such person pays any reasonable expenses in connection with its admission as a new Member. The admission of a substitute Member shall not result in the release of the Member who assigned the Membership Interest from any liability that such Member may have to the Company.

7.4 Affiliate Transfers. The Membership Interest of any Member may be transferred subject to compliance with Section 7.2, and without the prior written consent of all Members as required by Section 7.1, by the Member to any Affiliate of the Member; it being agreed that in executing the Agreement, each Member has consented to such transfers.

7.5 Effective Date of Permitted Transfers. Any permitted transfer of all or any portion of a Membership Interest shall be effective as of the date provided in Section 6.3 following the date upon which the requirements of Sections 7.1, 7.2 and 7.3 have been met. The Company shall provide the Members with written notice of such transfer as promptly as possible after the requirements of Sections 7.1, 7.2 and 7.3 have been met. Any transferee of a Membership Interest shall take subject to the restrictions on transfer imposed by the Agreement.

6.11 Restriction on Distributions.

A. No distribution shall be made if, after giving effect to the distribution:

(i) The Company would not be able to pay its debts as they become due in the usual course of business.

(ii) The Company's total assets would be less than the sum of its total liabilities plus, unless the Agreement provides otherwise, the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members, if any, upon dissolution that are superior to the rights of the Member receiving the distribution.

B. The Members may base a determination that a distribution is not prohibited on any of the following:

(i) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.

(ii) A fair valuation.

(iii) Any other method that is reasonable in the circumstances.

Except as provided in the Corporations Code, the effect of a distribution is measured as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or the date payment is made if it occurs more than 120 days of the date of authorization.

6.13 Return of Distributions. Except for distributions made in violation of the Act or the Agreement, no Member or Economic Interest Owner shall be obligated to return any distribution to the Company or pay the amount of any distribution for the account of the Company or to any creditor of the Company. The amount of any distribution returned to the Company by a Member or Economic Interest Owner or paid by a Member or Economic Interest Owner for the account of the Company or to a creditor of the Company shall be added to the account or accounts from which it was subtracted when it was distributed to the Member or Economic Interest Owner.

6.14 Obligations of Members to Report Allocations. The Members are aware of the income tax consequences of the allocations made by this Article VI and hereby agree to be bound by the provisions of this Article VI in reporting their shares of Company income and loss for income tax purposes.

7.6 Rights of Legal Representatives. The powers of that Member may be exercised by its legal representative.

7.7 No Effect to Transfers in Violation of Agreement. Upon any transfer of a Membership Interest in violation of this Article VII, the transferee shall have no right to vote or participate in the management of the business, property and affairs of the Company or to exercise any rights of a Member. Such transferee shall only be entitled to become an Economic Interest Owner and thereafter shall only receive the share of one or more of the Company's Net Profits, Net Losses and distributions of the Company's assets to which the transferor of such Economic Interest would otherwise be entitled. Notwithstanding the immediately preceding sentences, if, in the determination of the non-transferring Member, a transfer in violation of this Article VII would cause the termination of the Company under the Code, in the sole discretion of the non-transferring Member, the transfer shall be null and void and the proposed transferee shall not become either a Member or an Economic Interest Owner. Upon and contemporaneously with any transfer, assignment, conveyance or sale (whether arising out of an attempted charge upon that Member's Economic Interest by judicial process, a foreclosure by a creditor of the Member or otherwise) of a Member's Economic Interest which does not at the same time transfer the balance of the rights associated with the Membership Interest transferred by the Member (including, without limitation, the rights of the Member to vote or participate in the management of the business, property and affairs of the Company), the Company shall purchase from the Member, and the Member shall sell to Company for a purchase price of \$100, all remaining rights and interests retained by the Member that immediately before the transfer, assignment, conveyance or sale were associated with the transferred Economic Interest. Such purchase and sale shall not, however, result in the release of the Member from any liability to the Company as a Member. Each Member acknowledges and agrees that the right of the Company to purchase such remaining rights and interests from a Member who transfers a Membership Interest in violation of this Article VII is not unreasonable under the circumstances existing as of the date hereof.

7.8 Right of First Refusal. Each time a Member proposes to transfer, assign, convey, sell, encumber or in any way alienate all or any part of its Membership Interest (or as required by operation of law or other involuntary transfer to do so) other than pursuant to Section 7.4, such Member shall first offer such Membership Interest to the Company and the non-transferring Member(s) in accordance with the following provisions:

A. Such Member shall deliver a written notice to the Company and the other Member(s) stating (i) such Member's bona fide intention to transfer such Membership Interest, (ii) the name and address of the proposed transferee, (iii) the Membership Interest to be transferred, and (iv) the purchase price in terms of payment for which the Member proposes to transfer such Membership Interest.

B. Within thirty (30) days after receipt of the notice described in Section 7.8 A., each non-transferring Member shall notify the Company in writing of its desire to purchase a portion



of the Membership Interest being so transferred. The failure of any Member to submit a notice within the applicable period shall constitute an election on the part of that Member not to purchase any of the Membership Interest which may be so transferred. Each Member so electing to purchase shall be entitled to purchase a portion of such Membership Interest in the same proportion that the Percentage Interest of such Member bears to the aggregate of the Percentage Interests of all of the Member(s) electing to so purchase the Membership Interest being transferred. In the event any Member elects to purchase none or less than all of its pro rata share of such Membership Interest, then the other Member(s) can elect to purchase more than their pro rata share. If such Member(s) fail to purchase the entire Membership Interest being transferred, the Company may purchase any remaining share of such Membership Interest.

C. Within ninety (90) days after receipt of the notice described in Section 7.8 A., the Company and the Member(s) electing to purchase such Membership Interest shall have the first right to purchase or obtain such Membership Interest upon the price and terms of payment designated in such notice. If such notice provides for the payment of non cash consideration, the Company and such purchasing Member(s) each may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non cash consideration offered as determined by the Company.

D. If the Company or the other Member(s) elect not to purchase or obtain all of the Membership Interest designated in such notice, then the transferring Member may transfer the Membership Interest described in the notice to the proposed transferee, providing such transfer (i) is completed within thirty (30) days after the expiration of the Company's and the other Member(s)' right to purchase such Membership Interest, (ii) is made on terms no less favorable to the transferring Member than as designated in the notice, and (iii) the requirements of Sections 7.1, 7.2 and 7.3 relating to unanimous consent of Members, securities and tax requirements hereof are met. If such Membership Interest is not so transferred, the transferring Member must give notice in accordance with this Section prior to any other or subsequent transfer of such Membership Interest.

## ARTICLE VIII

### CONSEQUENCES OF DISSOLUTION OR BANKRUPTCY OF MEMBER

8.1 Dissolution Event. Upon the occurrence of a Dissolution Event, the Company shall dissolve unless the remaining Member(s) ("Remaining Member(s)") holding all of the remaining Membership Interests consent within ninety (90) days of the Dissolution Event to the continuation of the business of the Company. If the Remaining Member(s) consent to the continuation of the business of the Company, the Company and/or the Remaining Member(s) shall purchase, and the Former Member or such Former Member's legal representative shall sell, the Former Member's Interest, as provided in this Article VIII to avoid dissolution of the Company.

8.2 Withdrawal. Notwithstanding Section 8.1, only upon the withdrawal by a Member in accordance with Section 4.4 will such Member be treated as a Former Member, or will the Company and/or the Remaining Member(s) be obligated to purchase, and will the Former Member be obligated to sell, the Former Member's Interest as provided in this Article VIII.

8.3 Purchase Price. The purchase price for the Former Member's Interest shall be the Capital Account balance of the Former Member as adjusted pursuant to Section 3.3; provided, however, that if the Former Member, such Former Member's legal representative or the Company, deems the Capital Account balance to vary from the fair market value of the Former Member's Interest by more than ten percent (10%), such party shall be entitled to require an appraisal by providing notice of the request for appraisal within thirty (30) days after the determination of the Remaining Member(s) to continue the business of the Company. In such event, the value of the Former Member's Interest shall be determined by three (3) independent appraisers, one selected by the Former Member or such Former Member's legal representative, one selected by the Company, and one selected by the two appraisers so named. The fair market value of the Former Member's Interest shall be the average of the two appraisals closest in amount to each other. In the event the fair market value is determined to vary from the Capital Account balance by less than ten percent (10%), the party requesting such appraisal shall all expense of all the appraisals incurred by the party offering to enter into the transaction at the Capital Account valuation. In all other events, the party requesting the appraisal shall pay one-half of such expense and the other party shall pay one-half of such expense. Notwithstanding the foregoing, if the Dissolution Event results from a breach of the Agreement by the Former Member, the purchase price shall be reduced by an amount equal to the damages suffered by the Company or the Remaining Member(s) as a result of such breach.

8.4 Notice of Intent to Purchase. Within thirty (30) days after the Company has notified the Remaining Member(s) as to the purchase price of the Former Member's Interest determined in accordance with Section 8.3, each Remaining Member shall notify the Company in writing of its desire to purchase a portion of the Former Member's Interest. The failure of any Remaining Member to submit a notice within the applicable period shall constitute an election on the part of the Member not to purchase any of the Former Member's Interest. Each Remaining Member so electing to purchase shall be entitled to purchase a portion of the Former Member's Interest in the same proportion that the Percentage Interest of the Remaining Member bears to the aggregate of the Percentage Interests of all of the Remaining Member(s) electing to purchase the Former Member's Interest.

8.5 Election to Purchase Less Than All of the Former Member's Interest. If any Remaining Member elects to purchase none or less than all of its pro rata share of the Former Member's Interest, then the Remaining Member(s) can elect to purchase more than their pro rata share. If the Remaining Member(s) fail to purchase the entire interest of the Former Member, the Company shall purchase any remaining share of the Former Member's Interest.

8.6 Payment of Purchase Price. The purchase price shall be paid by the Company or the Remaining Member(s), as the case may be, by either of the following methods, each of which may be selected separately by the Company or the Remaining Member(s):

A. The Company or the Remaining Member(s) shall at the closing pay in cash the total purchase price for the Former Member's Interest; or

B. The Company or the Remaining Member(s) shall pay at the closing one-fifth (1/5) of the purchase price in which case the balance of the purchase price shall then be paid in four equal annual principal installments, plus accrued interest, and be payable each year on the anniversary date of the closing. The unpaid principal balance shall accrue interest at the current applicable federal rate as provided in the Code for the month in which the initial payment is made, but the Company and the Remaining Member(s) shall have the right to prepay in full or in part at any time without penalty. The obligation to pay the balance due shall be evidenced by a promissory note, and if purchased by a Remaining Member, secured by a pledge of the Membership Interest being purchased.

8.7 Closing of Purchase of Former Member's Interest. The closing for the sale of a Former Member's Interest pursuant to this Article VIII shall be held at 10:00 a.m. at the principal office of Company no later than sixty (60) days after the determination of the purchase price, except that if the closing date falls on a Saturday, Sunday, or California legal holiday, then the closing shall be held on the next succeeding business day. At the closing, the Former Member or such Former Member's legal representative shall deliver to the Company or the Remaining Member(s) an instrument of transfer (containing warranties of title and no encumbrances) conveying the Former Member's Interest. The Former Member or such Former Member's legal representative, the Company and the Remaining Member(s) shall do all things and execute and deliver all papers as may be necessary fully to consummate such sale and purchase in accordance with the terms and provisions of the Agreement.

8.8 Purchase Terms Varied by Agreement. Nothing contained herein is intended to prohibit Members from agreeing upon other terms and conditions for the purchase by the Company or any Member of the Membership Interest of any Member in the Company desiring to retire, withdraw or resign, in whole or in part, as a Member.

8.9 Noncompetition.

A. If any Member transfers its Membership Interest pursuant to either Article VII or VIII, such Member agrees that, for a period of one (1) year from the date of such transfer, he or she shall not:

(i) Enter, directly or indirectly, into the employment of, or render, directly or indirectly, any services (whether as a director, officer, agent, representative, independent

contractor, consultant or advisor or any other similar relationship or capacity), to any Person (such person is referred to as a "Competitor") which provides those services, or which otherwise competes with, or carries on a similar business to any business now carried on by the Company in the counties (and all cities located therein) described on Exhibit "H" (the "Territory"), whether such business is carried on by the Company or by a successor or assign in any of these counties;

(ii) Engage, directly or indirectly, in any such business in the Territory as a Competitor;

(iii) Become interested, directly or indirectly, in any such Competitor as an individual, proprietor, franchisee, partner, joint venturer, stockholder, principal, member, investor, trustee or any other similar other relationship or capacity;

(iv) Directly or indirectly, by sole action or in concert with others, solicit, induce or influence, or seek to solicit, induce or influence, any Person who is engaged by the Company as an employee, agent, independent contractor or otherwise, to leave the employ of the Company or any successor or assign;

(v) Directly or indirectly, by sole action or in concert with others, solicit, induce or influence, or seek to solicit, induce or influence, any customer or client of the Company during the twelve (12) calendar months immediately preceding the date of transfer of the Membership Interest; and

(vi) Use, divulge, furnish or make accessible to any Person (other than at the written request of the Company) any secret, confidential or proprietary knowledge or information of the Company including, but not limited to, any trade secrets, financial information, customer or client lists, marketing methods, data, properties, specifications, personnel, organization or internal affairs of the Company.

B. The agreements contained in Section 8.9 A. shall be construed as a series of separate covenants, one for each activity of the Member, capacity in which the Member is prohibited from competing and each part of the Territory in which the Company is carrying on in such activity.

C. The Members intend that Section 8.9 A. satisfy the terms of, and be enforceable in accordance with California Business and Professions Code Section 16602.5, which authorizes any member who sells its interest in a limited liability company to enter into an agreement with the buyer of such interest to refrain from carrying on a similar business within the counties or cities in which a limited liability company carries on a like business therein. Each Member recognizes that the territorial and time restrictions set forth herein are reasonable, not burdensome and are properly required by law for the adequate protection of the Company and its Members. If such territorial or time restrictions or any other provision contained herein shall be deemed to be illegal, unenforceable or unreasonable by a court of competent jurisdiction, each Member agrees and

submits to the reduction of such territorial or time restriction or other provision to such an area or period as such court shall deem reasonable.

D. Each Member acknowledges that (i) the covenants and the restrictions contained in Section 8.9 A. are a material factor to such Member's execution of the Agreement and are necessary and required for the protection of the Company, (ii) such covenants relate to matters that are of a special, unique and extraordinary character that gives each of such covenants a special, unique and extraordinary value, and (iii) a breach of any of such covenants will result in irreparable harm and damages to the Company in an amount difficult to ascertain and which cannot be adequately compensated by a monetary award. Accordingly, in addition to any of the relief to which the Company may be entitled at law or in equity, the Company shall be entitled to temporary and/or permanent injunctive relief from any breach or threatened breach by a Member of the provisions of Section 8.9 A. without proof of actual damages that have been or may be caused to the Company by such breach or threatened breach.

## ARTICLE IX

### ACCOUNTING, RECORDS, REPORTING BY MEMBERS

9.1 Books and Records. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed for federal income tax purposes. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its principal office in California all of the following:

A. A current list of the full name and last known business or residence address of each Member and Economic Interest Owner set forth in alphabetical order, together with the Capital Contributions, Capital Account and Percentage Interest of each Member and Economic Interest Owner;

B. A copy of the Articles and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed;

C. Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

D. A copy of the Agreement and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Agreement or any amendments thereto have been executed;

E. Copies of the financial statements of the Company, if any, for the six most recent Fiscal Years; and

F. The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four Fiscal Years.

9.2 Delivery to Members and Inspection.

A. Upon the request of any Member or Economic Interest Owner for purposes reasonably related to the interest of that Person as a Member or Economic interest Owner, the Company shall promptly deliver to the requesting Member or Economic Interest Owner, at the expense of the Company, a copy of the information required to be maintained by Sections 9.1 A, B, and D, and a copy of the Agreement.

B. Each Member and Economic Interest Owner has the right, upon reasonable request for purposes reasonably related to the interest of the Person as Member or Economic Interest Owner to:

(i) Inspect and copy during normal business hours any of the Company records described in Sections 9.1 A through G; and

(ii) Obtain from the Company, promptly after their becoming available, a copy of the Company's federal, state, and local income tax or information returns

C. Members representing at least five Percent (5%) of the Percentage Interests make a written request to the Company for an income statement of the Company for the initial three-month, six-month, or nine-month period of the current Fiscal Year ended more than 30 days prior to the date of the request, and a balance sheet of the Company as of the end of that period. If so requested, the statement shall be delivered or mailed to the Members within 30 days thereafter.

D. Any request, inspection or copying by a Member or Economic Interest Owner under this Section 9.2 may be made by that Person or that Person's agent or attorney.

9.3 Annual Statements.

A. The Company shall cause an annual report to be sent to each of the Members not later than 120 days after the close of the Fiscal Year. The report shall contain a balance sheet as of the end of the Fiscal Year and an income statement and statement of changes in financial position for the Fiscal Year.

B. The Company shall cause to be prepared at least annually information necessary for the preparation of the Members' and Economic Interest Owners' federal and state

income tax returns. The Company shall send or cause to be sent to each Member or Economic Interest Owner within 90 days after the end of each taxable year such information as is necessary to complete federal and state income tax or information returns, and, if the Company has 35 or fewer Members, a copy of the Company's federal, state, and local income tax or information returns for that year.

C. The Company shall cause to be filed at least annually with the California Secretary of State the statement required under California Corporations Code Section 17060.

9.4 Financial and Other Information. The Company shall provide such financial and other information relating to the Company or any other Person in which the Company owns, directly or indirectly, an equity interest, as a Member may reasonably request. The Company shall distribute to the Members, promptly after the preparation or receipt thereof by the Company, any financial or other information relating to any Person in which the Company owns, directly or indirectly, an equity interest, including any filings by such Person under the Securities Exchange Act of 1934, as amended, that is received by the Company with respect to any equity interest of the Company in such Person.

9.5 Filings. The Member, at Company expense, shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The Members, at Company expense, shall also cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to, or restatements of, the Articles and all reports required to be filed by the Company with those entities under the Act or other then current applicable laws, rules, and regulations. If a Member required by the Act to execute or file any document fails, after demand, to do so within a reasonable period of time or refuses to do so, any other Member may prepare, execute and file that document with the California Secretary of State.

9.6 Bank Accounts. The Members shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company, and shall not permit the funds of the Company to be commingled in any fashion with the funds of any other Person.

9.7 Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Members. The Members may rely upon the advice of their accountants as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

9.8 Tax Matters for the Company Handled by Members and Tax Matters Partner. The Members shall from time to time cause the Company to make such tax elections as they deem to be in the best interests of the Company and the Members. The Tax Matters Partner, as defined in Code Section 6231, shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting judicial and administrative proceedings, and shall expend the Company funds for professional services and costs

associated therewith. The Tax Matters Partner shall oversee the Company tax affairs in the overall best interests of the Company. If for any reason the Tax Matters Partner can no longer serve in that capacity or ceases to be a Member, Members holding a Majority Interest may designate another to be Tax Matters Partner.

## ARTICLE X

### DISSOLUTION AND WINDING UP

10.1 Dissolution. The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

- A. Upon the happening of any event of dissolution specified in the Articles;
- B. Upon the entry of a decree of judicial dissolution pursuant to Section 17351 of the Corporations Code;
- C. Upon the vote of Members holding a Majority in Interest or of non defaulting Members holding a majority of the Percentage Interests held by all non-defaulting Members pursuant to Section 3.5(c);
- D. The occurrence of a Dissolution Event and the failure of the Remaining Member(s) to consent in accordance with Section 8.1 to continue the business of the Company within ninety (90) days after the occurrence of such event or the failure of the Company or the Remaining Member(s) to purchase the Former Member's Interest as provided in Section 8.2; or
- E. The sale of all or substantially all of the assets of Company.

10.2 Certificate of Dissolution. As soon as possible following the occurrence of any of the events specified in Section 10.1, the Member(s) who have not wrongfully dissolved the Company or, if none, the Members, shall execute a Certificate of Dissolution in such form as shall be prescribed by the California Secretary of State and file the Certificate as required by the Act.

10.3 Winding Up. Upon the occurrence of any event specified in Section 10.1, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. The Member(s) who have not wrongfully dissolved the Company or, if none, the Members, shall be responsible for overseeing the winding up and liquidation of Company, shall take full account of the liabilities of Company and assets, shall either cause its assets to be sold or distributed, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided in Section 10.5. The Persons winding up the affairs of the Company shall give written notice of the commencement of winding up by mail



to all known creditors and claimants whose addresses appear on the records of the Company. The Member(s) winding up the affairs of the Company shall be entitled to reasonable compensation for such services.

10.4 Distributions in Kind. Any non-cash asset distributed to one or more Members shall first be valued at its fair market value to determine the Net Profit or Net Loss that would have resulted if such asset were sold for such value, such Net Profit or Net Loss shall then be allocated pursuant to Article VI, and the Members' Capital Accounts shall be adjusted to reflect such allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in such distributed asset shall be the fair market value of such interest (net of any liability secured by such asset that such Member assumes or takes subject to). The fair market value of such asset shall be determined by the Members or if any Member objects by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) selected by a liquidating trustee and approved by the Members.

10.5 Order of Payment of Liabilities Upon Dissolution.

A. After determining that all known debts and liabilities of the Company in the process of winding-up, including, without limitation, debts and liabilities to Members who are creditors of the Company, have been paid or adequately provided for, the remaining assets shall be distributed to the Members in accordance with their positive Capital Account balances, after taking into account income and loss allocations for the Company's taxable year during which liquidation occurs. Such liquidating distributions shall be made by the end of the Company's taxable year in which the Company is liquidated, or, if later, within ninety (90) days after the date of such liquidation.

B. The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(i) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof, and the provision, including the financial responsibility of the Person, was determined in good faith and with reasonable care by the Members to be adequate at the time of any distribution of the assets pursuant to this Section.

(ii) The amount of the debt or liability has been deposited as provided in the Corporations Code.

This Section 10.5 B. shall not prescribe the exclusive means of making adequate provision for debts and liabilities.

10.6 Compliance with Regulations. All payments to the Members upon the winding and dissolution of Company shall be strictly in accordance with the positive capital account balance limitation and other requirements of Regulations Section 1.704-1(b)(2)(ii)(d).

10.7 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in the Agreement, each Member shall only be entitled to look solely at the assets of Company for the return of its positive Capital Account balance and shall have no recourse for its Capital Contribution and/or share of Net Profits (upon dissolution or other vise) against any other Member except as provided in Article XI.

10.8 Certificate of Cancellation. The Member(s) who filed Certificate of Dissolution shall cause to be filed in the office of, and on a form prescribed by, the California Secretary of State, a certificate of cancellation of the Articles upon the completion of the winding up of the affairs of the Company.

10.9 No Action for Dissolution. Except as expressly permitted in the Agreement, a Member shall not take any voluntary action that directly causes a Dissolution Event. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company under circumstances where dissolution is not required by Section 10.1. The Agreement has been drawn carefully to provide fair treatment of all parties and equitable payment in liquidation of the Economic Interests. Accordingly, except where the Members have failed to liquidate the Company as required by this Article X, each Member hereby waives and renounces its right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of judicial dissolution of the Company on the ground that (a) it is not reasonably practicable to carry on the business of the Company in conformity with the Articles or the Agreement, or (b) dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member. Damages for breach of this Section 10.10 shall be monetary damages only (and not specific performance), and the damages may be offset against distributions by the Company to which such Member would otherwise be entitled.

## ARTICLE XI

### INDEMNIFICATION AND INSURANCE

11.1 Indemnification of Agents. The Company shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a Member, officer, employee or other agent of the Company or that, being or having been such a Member, officer, employee or agent, he or she is or was serving at the request of the Company as a manager, director, officer, employee or other agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to hereinafter as an "Agent"), to the fullest extent

permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. The Company shall be authorized to enter into indemnity agreements from time to time with any Person entitled to be indemnified by the Company hereunder, upon such terms and conditions as the Members deem appropriate in their business judgment.

11.2 Insurance. The Company shall have the power to purchase and maintain insurance on behalf of any Person who is or was an agent of the Company against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of Section 11.1 or under applicable law.

## ARTICLE XII

### INVESTMENT REPRESENTATIONS

Each Member hereby represents and warrants to, and agrees with, the other Member(s), and the Company as follows:

12.1 Preexisting Relationship or Experience. (i) It has a preexisting personal or business relationship with the Company or one or more of its officers, Members or control persons or (ii) by reason of its business or financial experience, or by reason of the business or financial experience of its financial advisor who is unaffiliated with and who is not compensated, directly or indirectly, by the Company or any affiliate or selling agent of the Company, he or she is capable of evaluating the risks and merits of an investment in the Membership Interest and of protecting its own interests in connection with this investment.

12.2 No Advertising. It has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation with respect to the sale of the Membership Interest.

12.3 Investment Intent. It is acquiring the Membership Interest for investment purposes for its own account only and not with a view to or for sale in connection with any distribution of all or any part of the Membership Interest. No other person will have any direct or indirect beneficial interest in or right to the Membership Interest.

12.4 Purpose of Entity. It was not organized for the specific purpose of acquiring the Membership Interest.

12.5 Residency. It is a resident of the state of California.

12.6 Economic Risk. It is financially able to bear the economic risk of an investment in the Membership Interest, including the total loss thereof.

12.7 No Registration of Membership Interest. It acknowledges that the Membership Interest has not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or qualified under the California Corporate Securities Law of 1968, as amended, or any other applicable blue sky laws in reliance, in part, on its representations, warranties, and agreements herein.

12.8 Membership Interest in Restricted Security. It understands that the Membership Interest is a "restricted security" under the Securities Act in that the Membership Interest will be acquired from the Company in a transaction not involving a public offering, and that the Membership Interest may be resold without registration under the Securities Act only in certain limited circumstances and that otherwise the Membership Interest must be held indefinitely. In this connection, it understands the resale limitations imposed by the Securities Act and is familiar with SEC Rule 144, as presently in effect, and the conditions which must be met in order for that Rule to be available for resale of restricted securities, including the requirement that the securities must be held for at least two years after purchase thereof from the Company prior to resale (three years in the absence of publicly available information about the Company) and the condition that there be available to the public current information about the Company under certain circumstances. It understands that the Company has not made such information available to the public and has no present plans to do

12.9 No Obligation to Register. It represents, warrants, and agrees that the Company and the Members are under no obligation to register or qualify the Membership Interest under the Securities Act or under any state securities law, or to assist it in complying with any exemption from registration and qualification.

12.10 No Disposition in Violation of Law. Without limiting the representations set forth above, and without limiting Article VII of the Agreement, it will not make any disposition of all or any part of the Membership Interest which will result in the violation by it or by the Company of the Securities Act, the California Corporate Securities Law of 1968, or any other applicable securities laws. Without limiting the foregoing, it agrees not to make any disposition of all or any part of the Membership Interest unless and until:

A. There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement and any applicable requirements of state securities laws; or

B. It has notified the Company of the proposed disposition and has furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and, if reasonably requested by the Company, it has furnished the Company with a written opinion of

counsel, reasonably satisfactory to the Company, that such disposition will not require registration of any securities under the Securities Act or the consent of or a permit from appropriate authorities under any applicable state securities law.

C. In the case of any disposition of all or any part of the Membership Interest pursuant to SEC Rule 144, in addition to the matters set forth in Section 12.11 B., it shall promptly forward to the Company a copy of any Form 144 filed with the SEC with respect to such disposition and a letter from the executing broker satisfactory to the Company evidencing compliance with SEC Rule 144. If SEC Rule 144 is amended or if the SEC's interpretations thereof in effect at the time of any such disposition have changed from its present interpretations thereof, it shall provide the Company with such additional documents as the Members may reasonably require.

12.11 Legends. It understands that the certificates (if any) evidencing the Membership Interest may bear one or all of the following legends:

A. "THE SECURITIES REPRESENTED BY The Agreement HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY The Agreement IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS, AND CONDITIONS WHICH ARE SET FORTH HEREIN."

B. Any legend required by applicable state securities laws.

12.12 Investment Risk. It acknowledges that the Membership Interest is a speculative investment which involves a substantial degree of risk of loss by it of its entire investment in the Company, that it understands and takes full cognizance of the risk factors related to the purchase of the Membership Interest, and that the Company is newly organized and has no financial or operating history.

12.13 Investment Experience. He or she is an experienced investor in unregistered and restricted securities of limited liability companies or limited partnerships.

12.14 Restrictions on Transferability. It acknowledges that there are substantial restrictions on the transferability of the Membership Interest pursuant to the Agreement, that there is no public market for the Membership Interest and none is expected to develop, and that, accordingly, it may not be possible for it to liquidate its investment in the Company.

12.15 Information Reviewed. It has received and reviewed all information he or she considers necessary or appropriate for deciding whether to purchase the Membership Interest. It has had an opportunity to ask questions and receive answers from the Company and its officers, Members and employees regarding the terms and conditions of purchase of the Membership Interest and regarding the business, financial affairs, and other aspects of the Company and has further had the opportunity to obtain all information (to the extent the Company possesses or can acquire such information without unreasonable effort or expense) which it deems necessary to evaluate the investment and to verify the accuracy of information otherwise provided to it.

12.16 No Representations By Company. Neither any Member, any agent or employee of the Company, or any other Person has at any time expressly or implicitly represented, guaranteed, or warranted to it that it may freely transfer its Membership Interest, that a percentage of profit and/or amount or type of consideration will be realized as a result of an investment in the Membership Interest, that past performance or experience on the part of the Members or their Affiliates or any other person in any way indicates the predictable results of the ownership of the Membership Interest or of the overall Company business, that any cash distributions from Company operations or otherwise will be made to the Members by any specific date or will be made at all, or that any specific tax benefits will accrue as a result of an investment in the Company.

12.17 Consultation with Attorney. It has been advised to consult with its own attorney regarding all legal matters concerning an investment in the Company and the tax consequences of participating in the Company, and has done so, to the extent it considers necessary.

12.18 Tax Consequences. It acknowledges that the tax consequences of investing in the Company will depend on its particular circumstances, and neither the Company, the Members, nor the partners, shareholders, members, managers, agents, officers, directors, employees, Affiliates, or consultants of any of them will be responsible or liable for the tax consequences to him or her of an investment in the Company. It will look solely to, and rely upon, its own advisers with respect to the tax consequences of this investment.

12.19 No Assurance of Tax Benefits. It acknowledges that there can be no assurance that the Code or the Regulations will not be amended or interpreted in the future in such a manner so as to deprive the Company and the Members of some or all of the tax benefits they might now receive, nor that some of the deductions claimed by the Company or the allocations of items of income, gain, loss, deduction, or credit among the Members may not be challenged by the Internal Revenue Service.

12.20 Indemnity. It shall indemnify and hold harmless the Company, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, agents, attorneys, registered representatives, and control persons of any such entity who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of or arising from any

misrepresentation or misstatement of facts or omission to represent or state facts made by him or her including, without limitation, the information in the Agreement, against losses, liabilities, and expenses of the Company, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, attorneys, accountants, agents, registered representatives, and control persons of any such Person (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by such Person in connection with such action, suit, proceeding, or the like.

## ARTICLE XIII

### MISCELLANEOUS

13.1 Counsel to the Company. Counsel to the Company may also be counsel to any Member or any Affiliate of a Member. The Members may execute on behalf of the Company and the Members any consent to the representation of the Company that counsel may request pursuant to the California Rules Of Professional Conduct or similar rules in any other jurisdiction ("Rules"). The Company has initially selected Daehnke & Cruz ("Company Counsel") as legal counsel to the Company. Each Member acknowledges that Company Counsel does not represent any Member in the absence of a clear and explicit agreement to such effect between the Member and Company Counsel, and that in the absence of any such agreement Company Counsel shall owe no duties directly to a Member. In the event any dispute or controversy arises between any Members and the Company, or between any Members or the Company, on the one hand, and a Member (or Affiliate of a Member) that Company Counsel represents, on the other hand, then each Member agrees that Company Counsel may represent either the Company or such Member (and/or its Affiliate), in any such dispute or controversy to the extent permitted by the Rules, and each Member hereby consents to such representation. Each Member further acknowledges that Company Counsel has not represented the interests of any Member other than in the preparation and negotiation of the Agreement.

13.2 Complete Agreement. The Agreement and the Articles constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members or any of them. No representation, statement, condition or warranty not contained in the Agreement or the Articles will be binding on the Members or have any force or effect whatsoever. To the extent that any provision of the Articles conflict with any provision of the Agreement, the Articles shall control.

13.3 Binding Effect. Subject to the provisions of the Agreement relating to transferability, the Agreement will be binding upon and inure to the benefit of the Members, and their respective successors and assigns.

13.4 Parties in Interest. Except as expressly provided in the Act, nothing in the Agreement shall confer any rights or remedies under or by reason of the Agreement on any Persons other than the Members and their respective successors and assigns nor shall anything in the Agreement relieve or discharge the obligation or liability of any third person to any party to the Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to the Agreement.

13.5 Pronouns: Statutory References. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the context in which they are used may require. Any reference to the Code, the Regulations, the Act, Corporations Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

13.6 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of the Agreement.

13.7 Interpretation. In the event any claim is made by any Member relating to any conflict, omission or ambiguity in the Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that the Agreement was prepared by or at the request of a particular Member or its counsel.

13.8 References to the Agreement. Numbered or lettered articles, sections and subsections herein contained refer to articles, sections and subsections of the Agreement unless otherwise expressly stated.

13.9 Jurisdiction. Each Member hereby consents to the exclusive jurisdiction of the state and federal courts sitting in California in any action on a claim arising out of, under or in connection with the Agreement or the transactions contemplated by the Agreement, provided such claim is not required to be arbitrated pursuant to Section 13.10. Each Member further agrees that personal jurisdiction over him or her may be effected by service of process by registered or certified mail addressed as provided in Section 13.14 of the Agreement, and that when so made shall be as if served upon him or her personally within the State of California.

13.10 Disputed Matters. Except as otherwise provided in the Agreement, any controversy or dispute arising out of the Agreement, the interpretation of any of the provisions hereof, or the action or inaction of any Member hereunder shall be submitted to binding arbitration in Orange County, California before JAMS under the commercial arbitration rules then in effect. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. No action at law or in equity based upon any claim arising out of or related to the Agreement shall be instituted in any court by any Member except (a) an action to compel arbitration pursuant to this



Section 13.10 or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this Section 13.10.

13.11 Exhibits. All Exhibits attached to the Agreement are incorporated and shall be treated as if set forth herein.

13.12 Severability. If any provision of the Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of the Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

13.13 Additional Documents and Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of the Agreement and the transactions contemplated hereby.

13.14 Notices. Any notice to be given or to be served upon the Company or any party hereto in connection with the Agreement must be in writing (which may include facsimile) and will be deemed to have been given and received when delivered to the address specified by the party to receive the notice. Such notices will be given to a Member at the address specified in Exhibit "C" hereto. Any party may, at any time by giving five (5) days' prior written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice will be given.

13.15 Amendments. All amendments to the Agreement will be in writing and signed by all of the Members.

13.16 Reliance on Authority of Person Signing Agreement. If a Member is not a natural person, neither the Company nor any Member will (a) be required to determine the authority of the individual signing the Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual or (b) be responsible for the application or distribution of proceeds paid or credited to individuals signing the Agreement on behalf of such entity.

13.17 No Interest in Company Property: Waiver of Action for Partition. No Member or Economic Interest Owner has any interest in specific property of the Company. Without limiting the foregoing, each Member and Economic Interest Owner irrevocably waives during the term of the Company any right that he or she may have to maintain any action for partition with respect to the property of the Company.

13.18 Multiple Counterparts. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

13.19 Attorney Fees. In the event that any dispute between the Company and the Members or among the Members should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses.

13.20 Time is of the Essence. All dates and times in the Agreement are of the

13.21 Remedies Cumulative. The remedies under the Agreement are cumulative and shall not exclude any other remedies to which any person may be lawfully entitled.

IN WITNESS WHEREOF, all of the Members of PACIFIC COAST ALLOY, LLC, a California limited liability company, have executed the Agreement, effective as of the date written above.

EXHIBIT "A"

ARTICLES OF ORGANIZATION

EXHIBIT "B"

AMENDMENT TO ARTICLES OF ORGANIZATION

EXHIBIT "C"

CAPITAL CONTRIBUTION OF MEMBERS AND ADDRESSES OF MEMBERS

<u>Member's Name</u>	<u>Member's Address</u>	<u>Member's Capital Contribution</u>	<u>Member's Percentage Interest</u>
----------------------	-------------------------	--	---

EXHIBIT "D"

DESCRIPTION OF CAPITAL CONTRIBUTION

EXHIBIT "E"

EXEMPLAR OF PROMISSORY NOTE

EXHIBIT "F"

EXEMPLAR OF SECURITY AGREEMENT



EXHIBIT "G"

OPERATING BUDGET

EXHIBIT "H"

DESCRIPTION OF TERRITORY

# Exhibit D-5



State of California  
Bill Jones  
Secretary of State

**FILED**  
In the Office of the Secretary of State  
of the State of California

AUG 15 2002

*Bill Jones*  
BILL JONES, Secretary of State

LIMITED LIABILITY COMPANY  
CERTIFICATE OF AMENDMENT

A \$30.00 filing fee must accompany this form  
IMPORTANT - Read instructions before completing this form.

This Space For Filing Use Only

1. Secretary of State File Number:  
199736410026
2. Name of Limited Liability Company:  
Pacific Coast Alloy LLC
3. Complete only the sections where information is being changed. Additional pages may be attached if necessary.
  - A. Limited Liability Company Name (end the name with the words "Limited Liability Company," "Ltd. Liability Co." or the abbreviations "LLC" or "L.L.C.")  
PCA Industries, LLC
  - B. The Limited Liability Company will be managed by (Check One):  
☐ one manager ☒ more than one manager ☐ single member limited liability company ☐ all limited liability company members
  - C. Amendment to text of the Articles of Organization.
  - D. Other matters to be included in this certificate may be set forth on separate attached pages and are made a part of this certificate. Other matters may include a change in the latest date on which the limited liability company is to dissolve or any change in the events that will cause the dissolution.

4. Future Effective Date, if any:                      Month                      Day                      Year
5. Number of pages attached, if any:    -0-
6. Declaration: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

*Robert H. Winters, Sr.*  
Signature of Authorized Person

Robert H. Winters, Sr., Manager;  
Type or Print Name and Title

*8/15/02*  
Date

7. RETURN TO:

NAME  
FIRM                      Laurie Harder Biegel, Paralegal  
ADDRESS                Rutan & Tucker, LLP  
CITY/STATE              611 Anton Blvd., Ste. 1400  
ZIP CODE                Costa Mesa, CA 92626

SEC/STATE (REV. 12/99)

FORM LLC-2 - FILING FEE: \$30.00  
Approved by Secretary of State

WINEPA001420

# Exhibit D-6



State of California  
Kevin Shelley  
Secretary of State

39

**FILED**  
In the office of the Secretary of State  
of the State of California

**LIMITED LIABILITY COMPANY - STATEMENT OF INFORMATION**

Filing Fee \$20.00 - If Amendment, See Instructions

JAN 26 2004

**IMPORTANT - Read Instructions Before Completing This Form**

1. LIMITED LIABILITY COMPANY NAME: (Do not alter if name is preprinted)

PCA INDUSTRIES, LLC  
1818 E. ROSSLYNN AVENUE  
FULLERTON CA 92831

2026

*Kevin Shelley*  
KEVIN SHELLEY, SECRETARY OF STATE

This Space For Filing Use Only

☐ IF THERE HAS BEEN NO CHANGE IN ANY OF THE INFORMATION CONTAINED IN THE LAST STATEMENT OF INFORMATION ON FILE WITH THE CALIFORNIA SECRETARY OF STATE, CHECK THE BOX AND PROCEED TO ITEM 12.

2. SECRETARY OF STATE FILE NUMBER **199736410026** 3. STATE OR PLACE OF ORGANIZATION **CA**

4. PRINCIPAL EXECUTIVE OFFICE

STREET ADDRESS **1818 E. ROSSLYNN AVE.**  
CITY **FULLERTON** STATE **CA** ZIP CODE **92831**

5. CALIFORNIA OFFICE WHERE RECORDS ARE MAINTAINED (FOR DOMESTIC ONLY)

STREET ADDRESS **1818 E. ROSSLYNN AVE.**  
CITY **FULLERTON** STATE **CA** ZIP CODE **92831**

6. CHECK THE APPROPRIATE PROVISION BELOW AND NAME THE AGENT FOR SERVICE OF PROCESS

☐ AN INDIVIDUAL RESIDING IN CALIFORNIA.  
☒ A CORPORATION WHICH HAS FILED A CERTIFICATE PURSUANT TO CALIFORNIA CORPORATIONS CODE SECTION 1505.

AGENT'S NAME: **ROBERT WINTERS**

7. ADDRESS OF THE AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL

ADDRESS **1818 E. ROSSLYNN AVE.**  
CITY **FULLERTON** STATE **CA** ZIP CODE **92831**

8. DESCRIBE TYPE OF BUSINESS OF THE LIMITED LIABILITY COMPANY:

**ALUMINUM AUTOMOBILE WHEEL MANUFACTURER.**

9. LIST THE NAME AND COMPLETE ADDRESS OF ANY MANAGER OR MANAGERS, OR IF NONE HAVE BEEN APPOINTED OR ELECTED, PROVIDE THE NAME AND ADDRESS OF EACH MEMBER. ATTACH ADDITIONAL PAGES, IF NECESSARY.

a. NAME **ROBERT H. WINTERS**  
ADDRESS **1818 E. ROSSLYNN AVE.**  
CITY **FULLERTON** STATE **CA** ZIP CODE **92831**

b. NAME **PETER GILBERT**  
ADDRESS **1726 E. ROSSLYNN AVE.**  
CITY **FULLERTON** STATE **CA** ZIP CODE **92831**

c. NAME  
ADDRESS  
CITY STATE ZIP CODE

10. CHIEF EXECUTIVE OFFICER (CEO), IF ANY:

NAME **ROBERT WINTERS**  
ADDRESS **1818 E. ROSSLYNN AVE.**  
CITY **FULLERTON** STATE **CA** ZIP CODE **92831**

11. NUMBER OF PAGES ATTACHED, IF ANY:

12. THIS STATEMENT IS TRUE, CORRECT, AND COMPLETE.

*Kelly Erskine*

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

SIGNATURE

TITLE

DATE

**PRESIDENT 12/18/03**

**DUE DATE: 12/31/2003**

SEC/STATE FORM LLC-12R (REV 01/03/03)

APPROVED BY SECRETARY OF STATE

WINEPA001422

# Exhibit D-7



State of California  
Secretary of State

LL



STATEMENT OF INFORMATION  
(Limited Liability Company)

Filing Fee \$20.00. If amendment, see instructions.

IMPORTANT — READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

1 LIMITED LIABILITY COMPANY NAME (Please do not alter if name is preprinted.)

199736410026  
PCA INDUSTRIES, LLC  
1818 E. ROSSLYNN AVENUE  
FULLERTON CA 92831

**FILED**  
In the office of the Secretary of State  
of the State of California

MAR 05 2008

This Space For Filing Use Only

DUE DATE: 12/31/2007

FILE NUMBER AND STATE OR PLACE OF ORGANIZATION

2 SECRETARY OF STATE FILE NUMBER

199736410026

3. STATE OR PLACE OF ORGANIZATION

CA

NO CHANGE STATEMENT

☒ If there has been no change in any of the information contained in the last Statement of Information filed with the Secretary of State, check the box and proceed to Item 13.

If there have been any changes to the information contained in the last Statement of Information filed, or no Statement of Information has been previously filed, this form must be completed in its entirety.

COMPLETE ADDRESSES FOR THE FOLLOWING (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE CITY AND STATE ZIP CODE

5. CALIFORNIA OFFICE WHERE RECORDS ARE MAINTAINED (DOMESTIC ONLY) CITY STATE ZIP CODE  
CA

NAME AND COMPLETE ADDRESS OF THE CHIEF EXECUTIVE OFFICER, IF ANY

6. NAME ADDRESS CITY AND STATE ZIP CODE

NAME AND COMPLETE ADDRESS OF ANY MANAGER OR MANAGERS, OR IF NONE HAVE BEEN APPOINTED OR ELECTED, PROVIDE THE NAME AND ADDRESS OF EACH MEMBER (Attach additional pages, if necessary.)

7. NAME ADDRESS CITY AND STATE ZIP CODE

8. NAME ADDRESS CITY AND STATE ZIP CODE

9. NAME ADDRESS CITY AND STATE ZIP CODE

AGENT FOR SERVICE OF PROCESS (If the agent is an individual, the agent must reside in California and Item 11 must be completed with a California address. If the agent is a corporation, the agent must have on file with the California Secretary of State a certificate pursuant to Corporations Code section 1505 and Item 11 must be left blank.)

10 NAME OF AGENT FOR SERVICE OF PROCESS

11 ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY STATE ZIP CODE  
CA

TYPE OF BUSINESS

12. DESCRIBE THE TYPE OF BUSINESS OF THE LIMITED LIABILITY COMPANY

13 THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

ROBERT WINTERS

TYPE OR PRINT NAME OF PERSON COMPLETING THE FORM

SIGNATURE

PRESIDENT

TITLE

1/28/08

DATE

APPROVED BY SECRETARY OF STATE

LLC-12R (REV 07/2006)

001735

WINEPA001424



# Exhibit D-8

LLC-4/7

# Certificate of Cancellation of a Limited Liability Company (LLC)

To cancel the Articles of Organization of a California LLC, or the Certificate of Registration of a registered foreign LLC, you can fill out this form, and submit for filing.

- There is no filing fee, however, a non-refundable \$15 service fee must be included, if you drop off the completed form.
- To file this form, the status of your LLC must be active on the records of the California Secretary of State. To check the status of the LLC, go to [kepler.sos.ca.gov](http://kepler.sos.ca.gov).

**Important!** California LLCs only: This form must be filed after or together with a Certificate of Dissolution (Form LLC-3). However, if the vote to dissolve was made by all of the members and that fact is noted in Item 4 below, Form LLC-3 is not required.

**Note:** Before submitting the completed form, you should consult with a private attorney for advice about your specific business needs. It is recommended for proof of submittal that if this form is mailed, it be sent by Certified Mail with Return Receipt Requested.

**FILED**  
Secretary of State  
State of California

APR 02 2014

This Space For Office Use Only

For questions about this form, go to [www.sos.ca.gov/business/be/filing-tips.htm](http://www.sos.ca.gov/business/be/filing-tips.htm).

① LLC's Exact Name in CA (on file with CA Secretary of State)

PACIFIC COAST ALLOY LLC

② LLC File No. (issued by CA Secretary of State)

199736410026

**Tax Liability** (The following statement should not be altered. For information about final tax returns, go to <https://www.ftb.ca.gov> or call the California Franchise Tax Board at (800) 852-5711 (from within the U.S.) or (916) 845-6500 (from outside the U.S.).)

- ③ All final returns required under the California Revenue and Taxation Code have been or will be filed with the California Franchise Tax Board.

**Dissolution** (California LLCs ONLY: Check the box if the vote to dissolve was made by the vote of all the members.)

- ④ ☒ The dissolution was made by the vote of all of the members.

**Additional Information** (If any, list any other information the persons filing this form determine to include.)

⑤

**Cancellation** (The following statement should not be altered.)

- ⑥ Upon the effective date of this Certificate of Cancellation, this LLC's Articles of Organization (CA LLCs) or Certificate of Registration (registered foreign LLCs) will be cancelled and its powers, rights and privileges will cease in California.

**Read and sign below:** This form must be signed by a person authorized by the LLC. If the signing person is a trust or another entity, go to [www.sos.ca.gov/business/be/filing-tips.htm](http://www.sos.ca.gov/business/be/filing-tips.htm) for more information. If you need more space, attach extra pages that are 1-sided and on standard letter sized paper (8 1/2" x 11"). All attachments are part of this document.

Sign here

ROBERT H. WINTERS  
Print your name here

PRESIDENT  
Your business title

Make check/money order payable to: Secretary of State

To get a copy of the filed document, include a separate request and payment for copy fees when the document is submitted. Copy fees are \$1 for the first page and \$.50 for each additional page. For certified copies, there is an additional \$5 certification fee, per copy.

By Mail

Secretary of State  
Business Entities, P.O. Box 944228  
Sacramento, CA 94244-2280

Drop-Off

Secretary of State  
1500 11th Street, 3rd Floor  
Sacramento, CA 95814

# Exhibit D-9

**State of California**  
**Secretary of State**

**CERTIFICATE OF STATUS**

**ENTITY NAME:** PACIFIC COAST ALLOY LLC

**FILE NUMBER:** 199736410026  
**FORMATION DATE:** 12/30/1997  
**TYPE:** DOMESTIC LIMITED LIABILITY COMPANY  
**JURISDICTION:** CALIFORNIA  
**STATUS:** CANCELLED

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify:

The records of this office indicate the entity filed a Certificate of Cancellation on April 2, 2014 and the entity's powers, rights and privileges have ceased.



**IN WITNESS WHEREOF**, I execute this certificate and affix the Great Seal of the State of California this day of December 3, 2015.

ALEX PADILLA  
Secretary of State

CFG

# Exhibit E



*(Do not use this form for Multi-Tenant Property)*

1.1 Parties: This Lease ("Lease"), dated for reference purposes only, JANUARY 1, 1995, is made by and between PCA METAL FINISHING, INC.

and ORANGE COUNTY METAL PROCESSING, INC. ("Lessee").

(collectively the "Parties," or individually a "Party").

1.2. **Premises:** That certain real property, including all Improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known by the street address of 1706, 1710, 1712 E. ROSSLYN AVE. and 1711 E. Kimberly AVE. located in the County of ORANGE, State of CALIFORNIA and generally described as (describe briefly the nature of the property) INDUSTRIAL BUILDINGS

- ("Premises"), (See Paragraph 2 for further provisions.)

1.3 Term: FOUR years and EIGHT months ("Original Term") commencing JANUARY 1, 1995  
("Commencement Date") and ending AUGUST 31, 1999 ("Expiration Date"). (See Paragraph 3 for further provisions.)

1.4 **Early Possession:** \_\_\_\_\_ ("Early Possession Date").  
(See Paragraphs 3.2 and 3.3 for further provisions.)

1.5 **Base Rent:** \$ 14,856.00 per month ("Base Rent"), payable on the FIRST day of each month commencing JANUARY 1, 1995

— (See Paragraph 4 for further provisions.)

☐ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 Base Rent Paid Upon Execution: \$ \_\_\_\_\_  
as Base Rent for the period \_\_\_\_\_

1.7 Security Deposit: \$ 5,757.60 ("Security Deposit"). (See Paragraph 5 for further provisions.)

1.8 Permitted Use: COMMERCIAL AND MANUFACTURING PURPOSES PERMITTED BY EXISTING  
LAWS AND ORDINANCES (See Paragraph 6 for further provisions.)

1.9 **Insuring Party:** ~~Lesser~~ <sup>Lessee</sup> is the "Insuring Party" unless otherwise stated herein. (See Paragraph 8 for further provisions.)

1.10. **Real Estate Brokers:** The following real estate brokers (collectively, the "**Brokers**") and brokerage relationships exist in this transaction and are consented to by the Parties (check applicable boxes):

☐ Lessor exclusively ("Lessor's Broker"): ☐ both Lessor and Lessee, and \_\_\_\_\_ represents

☐ Lessee exclusively ("Lessee's Broker"); ☐ both Lessee and Lessor. (See Paragraph 15 for further provisions.) \_\_\_\_\_ represents

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by \_\_\_\_\_ ("Guarantor"). (See Paragraph 37 for further provisions.)

1.12 ~~Addenda~~. Attached hereto is an Addendum or Addenda consisting of Paragraphs ~~49~~ 49 through 50 of which constitute a part of this Lease.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of square footage set forth in this Lease, or that may have been used in calculating rental, is an approximation which Lessor and Lessee agree is reasonable and the rental based thereon is not subject to revision whether or not the actual square footage is more or less.

**2.2 Condition.** Lessor shall deliver the Premises to Lessee clean and free of debris on the Commencement Date and warrants to Lessee that the existing plumbing, fire sprinkler system, lighting, air conditioning, heating, and loading doors, if any, in the Premises, other than those constructed by Lessee, shall be in good operating condition on the Commencement Date. If a non-compliance with said warranty exists as of the Commencement Date, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within thirty (30) days after the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.

**2.3 Compliance with Covenants, Restrictions and Building Code.** Lessor warrants to Lessee that the improvements on the Premises comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances in effect on the Commencement Date. Said warranty does not apply to the use to which Lessee will put the Premises or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within six (6) months following the Commencement Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.

**2.4 Acceptance of Premises.** Lessee hereby acknowledges; (a) that it has been advised by the Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical and fire sprinkler systems, security, environmental aspects, compliance with Applicable Law, as defined in Paragraph 6.3) and the present and future suitability of the Premises for Lessee's intended use, (b) that Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to Lessee's occupancy of the Premises and/or the term of this Lease, and (c) that neither Lessor, nor any of Lessor's agents, has made any oral or written representations or warranties with respect to the said matters other than as set forth in this Lease.

2.5 **Lessee Prior Owner/Occupant.** The warranties made by Lessor in this Paragraph 2 shall be of no force or effect if immediately prior to the date set forth in Paragraph 1.1 Lessee was the owner or occupant of the Premises. In such event, Lessee shall, at Lessee's sole cost and expense, correct any non-compliance of the Premises with said warranties.

### 3. Term.

**3.1 Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease, however, (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such early possession shall not affect nor advance the Expiration Date of the Original Term.

Initials

**3.3 Delay in Possession.** If for any reason Lessor cannot deliver possession of the Premises to Lessee as agreed herein by the Early Possession Date, if one is specified in Paragraph 1.4, or, if no Early Possession Date is specified, by the Commencement Date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease, or the obligations of Lessee hereunder, or extend the term hereof, but in such case, Lessee shall not, except as otherwise provided herein, be obligated to pay rent or perform any other obligation of Lessee under the terms of this Lease until Lessee delivers possession of the Premises to Lessee. If possession of the Premises is not delivered to Lessee within sixty (60) days after the Commencement Date, Lessee may, at its option, by notice in writing to Lessor within ten (10) days thereafter, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder; provided, however, that if such written notice by Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease shall terminate and be of no further force or effect. Except as may be otherwise provided, and regardless of when the term actually commences, if possession is not tendered to Lessee when required by this Lease and Lessee does not terminate this Lease, as aforesaid, the period free of the obligation to pay Base Rent, if any, that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts, changes or omissions of Lessee.

#### **4. Rent.**

**4.1 Base Rent.** Lessee shall cause payment of Base Rent and other rent or charges, as the same may be adjusted from time to time, to be received by Lessor in lawful money of the United States, without offset or deduction, on or before the day on which it is due under the terms of this Lease. Base Rent and all other rent and charges for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of the calendar month involved. Payment of Base Rent and other charges shall be made to Lessor at its address stated herein or to such other persons or at such other addresses as Lessor may from time to time designate in writing to Lessee.

**5. Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit set forth in Paragraph 1.7 as security for Lessee's faithful performance of Lessee's obligations under this Lease. If Lessee fails to pay Base Rent or other rent or charges due hereunder, or otherwise Defaults under this Lease (as defined in Paragraph 13.1), Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, cost, expense, loss or damage (including attorneys' fees) which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of said Security Deposit, Lessee shall within ten (10) days after written request therefor deposit moneys with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Any time the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional moneys with Lessor sufficient to maintain the same ratio between the Security Deposit and the Base Rent as those amounts are specified in the Basic Provisions. Lessor shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Lessor shall, at the expiration or earlier termination of the term hereof and after Lessee has vacated the Premises, return to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest herein), that portion of the Security Deposit not used or applied by Lessor. Unless otherwise expressly agreed in writing by Lessor, no part of the Security Deposit shall be considered to be held in trust, to bear interest or other increment for its use, or to be prepayment for any moneys to be paid by Lessee under this Lease.

#### **6. Use.**

**6.1 Use.** Lessee shall use and occupy the Premises only for the purposes set forth in Paragraph 1.8, or any other use which is comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that creates waste or a nuisance, or that disturbs others and/or occupants of, or causes damage to, neighboring premises or properties. Lessor hereby agrees to not unreasonably withhold or delay its consent to any written request by Lessee, Lessee's assignees or subtenants, and by prospective assignees and subtenants of the Lessee, its assignees and subtenants, for a modification of said permitted purpose for which the premises may be used or occupied, so long as the same will not impair the structural integrity of the Improvements on the Premises, the mechanical or electrical systems therein, is not significantly more burdensome to the Premises and the improvements thereon, and is otherwise permissible pursuant to this Paragraph 6. If Lessor elects to withhold such consent, Lessor shall within five (5) business days give a written notification of same, which notice shall include an explanation of Lessor's reasonable objections to the change in use.

##### **6.2 Hazardous Substances.**

**(a) Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in, on or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Lessor and compliance in a timely manner (at Lessee's sole cost and expense) with all Applicable Law (as defined in Paragraph 6.3). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority. Reportable Use shall also include Lessee's being responsible for the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Law requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may, without Lessor's prior consent, but in compliance with all Applicable Law, use any ordinary and customary materials reasonably required to be used by Lessee in the normal course of Lessee's business permitted on the Premises, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may (but without any obligation to do so) condition its consent to the use or presence of any Hazardous Substance, activity or storage tank by Lessee upon Lessee's giving Lessor such additional assurances as Lessor, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefrom or therefor, including, but not limited to, the installation (and removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit under Paragraph 5 hereof.

**(b) Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance, or a condition involving or resulting from same, has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor. Lessee shall also immediately give Lessor a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from, any governmental authority or private party, or persons entering or occupying the Premises, concerning the presence, spill, release, discharge of, or exposure to, any Hazardous Substance or contamination in, on, or about the Premises, including but not limited to all such documents as may be involved in any Reportable Uses involving the Premises.

**(c) Indemnification.** Lessee shall indemnify, protect, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all loss of rent and/or damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and attorney's and consultant's fees arising out of or involving any Hazardous Substance or storage tank brought onto the Premises by or for Lessee or under Lessee's control. Lessee's obligations under this Paragraph 6 shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation (including consultant's and attorney's fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances or storage tanks, unless specifically so agreed by Lessor in writing at the time of such agreement.

**6.3 Lessee's Compliance with Law.** Except as otherwise provided in this Lease, Lessee, shall, at Lessee's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Law," which term is used in this Lease to include all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance or storage tank), now in effect or which may hereafter come into effect, and whether or not reflecting a change in policy from any previously existing policy. Lessee shall, within five (5) days after receipt of Lessor's written request, provide Lessor with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Lessee's compliance with any Applicable Law specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Lessee or the Premises to comply with any Applicable Law.

**6.4 Inspection; Compliance.** Lessor and Lessor's Lender(s) (as defined in Paragraph 8.3(a)) shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease and all Applicable Laws (as defined in Paragraph 6.3), and to employ experts and/or consultants in connection therewith and/or to advise Lessor with respect to Lessee's activities, including but not limited to the installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance or storage tank on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a Default or Breach of this Lease, violation of Applicable Law, or a contamination, caused or materially contributed to by Lessee is found to exist or be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In any such case, Lessee shall upon request reimburse Lessor or Lessor's Lender, as the case may be, for the costs and expenses of such inspections.

#### **7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

##### **7.1 Lessee's Obligations.**

**(a)** Subject to the provisions of Paragraphs 2.2 (Lessor's warranty as to condition), 2.3 (Lessor's warranty as to compliance with covenants, etc.),

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7.2 (Lessor's obligations to repair), 9 (damage and destruction), and 14 (condemnation), Lessee shall, at Lessee's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair, structural and non-structural (whether or not such portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, without limiting the generality of the foregoing, all equipment or facilities serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, including fire alarm and/or smoke detection systems and equipment, fire hydrants, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylights landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, about, or adjacent to the Premises. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises, the elements surrounding same, or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance and/or storage tank brought onto the Premises by or for Lessee or under its control. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. If Lessee occupies the Premises for seven (7) years or more, Lessor may require Lessee to repaint the exterior of the buildings on the Premises as reasonably required, but not more frequently than once every seven (7) years.

(b) Lessee shall, at Lessee's sole cost and expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in, the inspection, maintenance and service of the following equipment and improvements, if any, located on the Premises: (i) heating, air conditioning and ventilation equipment, (ii) boiler, fired or unfired pressure vessels, (iii) fire sprinkler and/or standpipe and hose or other automatic fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drain maintenance and (vi) asphalt and parking lot maintenance.

**7.2 Lessor's Obligations.** Except for the warranties and agreements of Lessor contained in Paragraphs 2.2 (relating to condition of the Premises), 2.3 (relating to compliance with covenants, restrictions and building code), 9 (relating to destruction of the Premises) and 14 (relating to condemnation of the Premises), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, the improvements located thereon, or the equipment therein, whether structural or non structural, all of which obligations are intended to be that of the Lessee under Paragraph 7.1 hereof. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises. Lessee and Lessor expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease with respect to, or which affords Lessee the right to make repairs at the expense of Lessor or to terminate this Lease by reason of any needed repairs.

### **7.3 Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions; Consent Required.** The term "Utility Installations" is used in this Lease to refer to all carpeting, window coverings, airlines, power panels, electrical distribution, security, fire protection systems, communication systems, lighting fixtures, heating, ventilating, and air conditioning equipment, plumbing, and fencing in, on or about the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements on the Premises from that which are provided by Lessor under the terms of this Lease, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor as defined in Paragraph 7.4(a). Lessee shall not make any Alterations or Utility Installations in, on, under or about the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof), as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, and the cumulative cost thereof during the term of this Lease as extended does not exceed \$25,000.

(b) **Consent.** Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with proposed detailed plans. All consents given by Lessor, whether by virtue of Paragraph 7.3(a) or by subsequent specific consent, shall be deemed conditioned upon: (i) Lessee's acquiring all applicable permits required by governmental authorities, (ii) the furnishing of copies of such permits together with a copy of the plans and specifications for the Alteration or Utility Installation to Lessor prior to commencement of the work thereon, and (iii) the compliance by Lessee with all conditions of said permits in a prompt and expeditious manner. Any Alterations or Utility Installations by Lessee during the term of this Lease shall be done in a good and workmanlike manner, with good and sufficient materials, and in compliance with all Applicable Law. Lessee shall promptly upon completion thereof furnish Lessor with as-built plans and specifications therefor. Lessor may (but without obligation to do so) condition its consent to any requested Alteration or Utility Installation that costs \$10,000 or more upon Lessee's providing Lessor with a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor under Paragraph 36 hereof.

(c) **Indemnification.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises. If Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to one and one-half times the amount of such contested lien claim or demand, indemnifying Lessor against liability for the same, as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorney's fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

### **7.4 Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require their removal or become the owner thereof as hereinafter provided in this Paragraph 7.4, all Alterations and Utility Additions made to the Premises by Lessee shall be the property of and owned by Lessee, but considered a part of the Premises. Lessor may, at any time, and at its option, elect in writing to Lessee to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per subparagraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or earlier termination of this Lease, become the property of Lessor and remain upon and be surrendered by Lessee with the Premises.

(b) **Removal.** Unless otherwise agreed in writing, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or earlier termination of this Lease, notwithstanding their installation may have been consented to by Lessor. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent of Lessor.

(c) **Surrender/Restoration.** Lessee shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice or by Lessee performing all of its obligations under this Lease. Except as otherwise agreed or specified in writing by Lessor, the Premises, as surrendered, shall include the Utility Installations. The obligation of Lessee shall include the repair of any damage occasioned by the installation, maintenance or removal of Lessee's Trade Fixtures, furnishings, equipment, and Alterations and/or Utility Installations, as well as the removal of any storage tank installed by or for Lessee, and the removal, replacement, or remediation of any soil, material or ground water contaminated by Lessee, all as may then be required by Applicable Law and/or good service practice. Lessee's Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee subject to its obligation to repair and restore the Premises per this Lease.

## **8. Insurance; Indemnity.**

**8.1 Payment For Insurance.** Regardless of whether the Lessor or Lessee is the Insuring Party, Lessee shall pay for all insurance required under this Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor in excess of \$1,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within ten (10) days following receipt of an invoice for any amount due.

### **8.2 Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force during the term of this Lease a Commercial General Liability policy of insurance protecting Lessee and Lessor (as an additional insured) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an "Additional Insured-Managers or Lessors of Premises" Endorsement and contain the "Amendment of the Pollution Exclusion" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance required by this Lease or as carried by Lessee shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried By Lessor.** In the event Lessor is the Insuring Party, Lessor shall also maintain liability insurance described in Paragraph 8.2(a), above, in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

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### 8.3 Property Insurance—Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and to the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lender(s)"), insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by Lenders, but in no event more than the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the Improvements involved, such latter amount is less than full replacement cost. If Lessor is the Insuring Party, however, Lessee Owned Alterations and Utility Installations shall be insured by Lessee under Paragraph 8.4 rather than by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered cause of loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an insured Loss, as defined in Paragraph 9.1(c).

(b) **Rental Value.** The Insuring Party shall, in addition, obtain and keep in force during the term of this Lease a policy or policies in the name of Lessor, with loss payable to Lessor and Lender(s), insuring the loss of the full rental and other charges payable by Lessee to Lessor under this Lease for one (1) year (including all real estate taxes, insurance costs, and any scheduled rental increases). Said insurance shall provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of rental revenues from the date of any such loss. Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected rental income, property taxes, insurance premium costs and other expenses, if any, otherwise payable by Lessee, for the next twelve (12) month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or if the Premises are part of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Tenant's Improvements.** If the Lessor is the Insuring Party, the Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease. If Lessee is the Insuring Party, the policy carried by Lessee under this Paragraph 8.3 shall insure Lessee Owned Alterations and Utility Installations.

**8.4 Lessee's Property Insurance.** Subject to the requirements of Paragraph 8.5, Lessee at the cost shall either by separate policy or, at Lessor's option, by endorsement to a policy already carried, maintain insurance coverage on all of Lessee's personal property, Lessee Owned Alterations and Utility Installations in, on, or about the Premises similar in coverage to that carried by the Insuring Party under Paragraph 8.3. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property or the restoration of Lessee Owned Alterations and Utility Installations. Lessee shall be the Insuring Party with respect to the insurance required by this Paragraph 8.4 and shall provide Lessor with written evidence that such insurance is in force.

**8.5 Insurance Policies.** Insurance required hereunder shall be in companies duly licensed to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, or such other rating as may be required by a Lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide." Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Paragraph 8. If Lessee is the Insuring Party, Lessee shall cause to be delivered to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of such insurance with the insureds and loss payable clauses as required by this Lease. No such policy shall be cancellable or subject to modification except after thirty (30) days prior written notice to Lessor. Lessee shall at least thirty (30) days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. If the Insuring Party shall fail to procure and maintain the insurance required to be carried by the Insuring Party under this Paragraph 8, the other Party may, but shall not be required to, procure and maintain the same, but at Lessee's expense.

**8.6 Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor ("Waiving Party") each hereby release and relieve the other, and waive their entire right to recover damages (whether in contract or in tort) against the other, for loss of or damage to the Waiving Party's property arising out of or incident to the perils required to be insured against under Paragraph 8. The effect of such releases and waivers of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

**8.7 Indemnity.** Except for Lessor's negligence and/or breach of express warranties, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, permits, attorney's and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises by Lessee, the conduct of Lessee's business, any act, omission or neglect of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Lessor) litigated and/or reduced to judgment, and whether well founded or not. In case any action or proceeding be brought against Lessor by reason of any of the foregoing matters, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be so indemnified.

**8.8 Exemption of Lessor from Liability.** Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

### 9. Damage or Destruction.

#### 9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the Improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, the repair cost of which damage or destruction is less than 50% of the then Replacement Cost of the Premises immediately prior to such damage or destruction, excluding from such calculation the value of the land and Lessee Owned Alterations and Utility Installations.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations the repair cost of which damage or destruction is 50% or more of the then Replacement Cost of the Premises immediately prior to such damage or destruction, excluding from such calculation the value of the land and Lessee Owned Alterations and Utility Installations.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the Improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of applicable building codes, ordinances or laws, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises.

**9.2 Partial Damage—Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make the insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, the shortage in proceeds was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If Lessor does not receive such funds or assurance within said period, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect. If in such case Lessor does not so elect, then this Lease shall terminate sixty (60) days following the occurrence of the damage or destruction. Unless otherwise agreed, Lessee shall in no event have any right to reimbursement from Lessor for

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any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3 rather than Paragraph 9.2, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

**9.3 Partial Damage—Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 13), Lessor may at Lessor's option, either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage of Lessor's desire to terminate this Lease as of the date sixty (60) days following the giving of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage totally at Lessee's expense and without reimbursement from Lessor. Lessee shall provide Lessor with the required funds or satisfactory assurance thereof within thirty (30) days following Lessee's said commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible and the required funds are available. If Lessee does not give such notice and provide the funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

**9.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs (including any destruction required by any authorized public authority), this Lease shall terminate sixty (60) days following the date of such Premises Total Destruction, whether or not the damage or destruction is an Insured Loss or was caused by a negligent or willful act of Lessee. In the event, however, that the damage or destruction was caused by Lessee, Lessor shall have the right to recover Lessor's damages from Lessee except as released and waived in Paragraph 8.6.

**9.5 Damage Near End of Term.** If at any time during the last six (6) months of the term of this Lease there is damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessor may, at Lessor's option, terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within thirty (30) days after the date of occurrence of such damage. Provided, however, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, within twenty (20) days following the occurrence of the damage, or before the expiration of the time provided in such option for its exercise, whichever is earlier ("Exercise Period"), (i) exercising such option and (ii) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs. If Lessee duly exercises such option during said Exercise Period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's expense repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during said Exercise Period, then Lessor may at Lessor's option terminate this Lease as of the expiration of said sixty (60) day period following the occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within ten (10) days after the expiration of the Exercise Period, notwithstanding any term or provision in the grant of option to the contrary.

**9.6 Abatement of Rent; Lessee's Remedies.**

(a) In the event of damage described in Paragraph 9.2 (Partial Damage—Insured), whether or not Lessor or Lessee repairs or restores the Premises, the Base Rent, Real Property Taxes, insurance premiums, and other charges, if any, payable by Lessee hereunder for the period during which such damage, its repair or the restoration continues (not to exceed the period for which rental value insurance is required under Paragraph 8.3(b)), shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of Base Rent, Real Property Taxes, insurance premiums, and other charges, if any, as aforesaid, all other obligations of Lessee hereunder shall be performed by Lessee, and Lessee shall have no claim against Lessor for any damage suffered by reason of any such repair or restoration.

(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9 and shall not commence, in a substantial and meaningful way, the repair or restoration of the Premises within ninety (90) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice to Lessor and such Lenders and such repair or restoration is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If Lessor or a Lender commences the repair or restoration of the Premises within thirty (30) days after receipt of such notice, this Lease shall continue in full force and effect. "Commence" as used in this Paragraph shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

**9.7 Hazardous Substance Conditions.** If a Hazardous Substance Condition occurs, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by Applicable Law and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 13), Lessor may at Lessor's option either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to investigate and remediate such condition exceeds twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition of Lessor's desire to terminate this Lease as of the date sixty (60) days following the giving of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the investigation and remediation of such Hazardous Substance Condition totally at Lessee's expense and without reimbursement from Lessor except to the extent of an amount equal to twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with the funds required of Lessee or satisfactory assurance thereof within thirty (30) days following Lessee's said commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such investigation and remediation as soon as reasonably possible and the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination. If a Hazardous Substance Condition occurs for which Lessee is not legally responsible, there shall be abatement of Lessee's obligations under this Lease to the same extent as provided in Paragraph 9.6(a) for a period of not to exceed twelve (12) months.

**9.8 Termination—Advance Payments.** Upon termination of this Lease pursuant to this Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor under the terms of this Lease.

**9.9 Waive Statutes.** Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

**10. Real Property Taxes.**

**10.1 (a) Payment of Taxes.** Lessee shall pay the Real Property Taxes, as defined in Paragraph 10.2, applicable to the Premises during the term of this Lease. Subject to Paragraph 10.1(b), all such payments shall be made at least ten (10) days prior to the delinquency date of the applicable installment. Lessee shall promptly furnish Lessor with satisfactory evidence that such taxes have been paid. If any such taxes to be paid by Lessee shall cover any period of time prior to or after the expiration or earlier termination of the term hereof, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year this Lease is in effect, and Lessor shall reimburse Lessee for any overpayment after such proration. If Lessee shall fail to pay any Real Property Taxes required by this Lease to be paid by Lessee, Lessor shall have the right to pay the same, and Lessee shall reimburse Lessor therefor upon demand.

(b) **Advance Payment.** In order to insure payment when due and before delinquency of any or all Real Property Taxes, Lessor reserves the right, at Lessor's option, to estimate the current Real Property Taxes applicable to the Premises, and to require such current year's Real Property Taxes to be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the installment due, at least twenty (20) days prior to the applicable delinquency date, or (ii) monthly in advance with the payment of the Base Rent. If Lessor elects to require payment monthly in advance, the monthly payment shall be that equal monthly amount which, over the number of months remaining before the month in which the applicable tax installment would become delinquent (and without interest thereon), would provide a fund large enough to fully discharge before delinquency the estimated installment of taxes to be paid. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payment shall be adjusted as required to provide the fund needed to pay the applicable taxes before delinquency. If the amounts paid to Lessor by Lessee under the provisions of this Paragraph are insufficient to discharge the obligations of Lessee to pay such Real Property Taxes as the same become due, Lessee shall pay to Lessor, upon Lessor's demand, such additional sums as are necessary to pay such obligations. All moneys paid to Lessor under this Paragraph may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a breach by Lessee in the performance of the obligations of Lessee under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, subject to proration as provided in Paragraph 10.1(a), at the option of Lessor, be treated as an additional Security Deposit under Paragraph 8.

**10.2 Definition of "Real Property Taxes."** As used herein, the term "Real Property Taxes" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed upon the Premises by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, levied against any legal or equitable interest of Lessor in the Premises or in the real property of which the Premises are a part, Lessor's right to rent or other income therefrom, and/or Lessor's business of leasing the Premises. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in applicable law taking effect, during the term of this Lease, including but not limited to a change in the ownership of the Premises or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the Parties.

**10.3 Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations

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assigned in the assignor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

**10.4 Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee-Owned Alterations, Utility Installations, Trade Fixtures, Furnishings, equipment and all personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause the taxes, fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property or, at Lessor's option, as provided in Paragraph 10.1.(b).  
**11. Utilities.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered with other premises.

## **12. Assignment and Subletting.**

### **12.1 Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise transfer or encumber (collectively, "assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent given under and subject to the terms of Paragraph 36.

(b) A change in the control of Lessee shall constitute an assignment requiring Lessor's consent. The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, refinancing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee, as hereinafter defined, by an amount equal to or greater than twenty-five percent (25%) of such Net Worth of Lessee as it was represented to Lessor at the time of the execution by Lessor of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, at whichever time said Net Worth of Lessee was or is greater, shall be considered an assignment of this Lease by Lessee to which Lessor may reasonably withhold its consent. "Net Worth of Lessee" for purposes of this Lease shall be the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles consistently applied.

(d) An assignment or subletting of Lessee's interest in this Lease without Lessor's specific prior written consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unconsented to assignment or subletting as a noncurable Breach, Lessor shall have the right to either: (i) terminate this Lease, or (ii) upon thirty (30) days written notice ("Lessor's Notice"), increase the monthly Base Rent to fair market rental value or one hundred ten percent (110%) of the Base Rent then in effect, whichever is greater. Pending determination of the new fair market rental value, if disputed by Lessee, Lessee shall pay the amount set forth in Lessor's Notice, with any overpayment credited against the next installment(s) of Base Rent coming due, and any underpayment for the period retroactively to the effective date of the adjustment being due and payable immediately upon the determination thereof. Further, in the event of such Breach and market value adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to the then fair market value (without the Lease being considered an encumbrance or any deduction for depreciation or obsolescence, and considering the Premises at its highest and best use and in good condition), or one hundred ten percent (110%) of the price previously in effect, whichever is greater, (ii) any index-oriented rental or price adjustment formulas contained in this Lease shall be adjusted to require that the base index be determined with reference to the index applicable to the time of such adjustment, and (iii) any fixed rental adjustments scheduled during the remainder of the Lease term shall be increased in the same ratio as the new market rental bears to the Base Rent in effect immediately prior to the market value adjustment.

(e) Lessee's remedy for any breach of this Paragraph 12.1 by Lessor shall be limited to compensatory damages, and injunctive relief.

### **12.2 Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Base Rent and other sums due Lessor hereunder or for the performance of any other obligations to be performed by Lessee under this Lease.

(b) Lessor may accept any rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of any rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for the Default or Breach by Lessee of any of the terms, covenants or conditions of this Lease.

(c) The consent of Lessor to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Lessee or to any subsequent or successive assignment or subletting by the sublessee. However, Lessor may consent to subsequent sublettings and assignments of the sublease or any amendments or modifications thereto without notifying Lessee or anyone else liable on the Lease or sublease and without obtaining their consent, and such action shall not relieve such persons from liability under this Lease or sublease.

(d) In the event of any Default or Breach of Lessee's obligations under this Lease, Lessor may proceed directly against Lessee, any Guarantors or any one else responsible for the performance of the Lessee's obligations under this Lease, including the sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor or Lessee.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a non-refundable deposit of \$1,000 or ten percent (10%) of the current monthly Base Rent, whichever is greater, as reasonable consideration for Lessor's considering and processing the request for consent. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested by Lessor.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed, for the benefit of Lessor, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented in writing.

(g) The occurrence of a transaction described in Paragraph 12.1(c) shall give Lessor the right (but not the obligation) to require that the Security Deposit be increased to an amount equal to six (6) times the then monthly Base Rent, and Lessor may make the actual receipt by Lessor of the amount required to establish such Security Deposit a condition to Lessor's consent to such transaction.

(h) Lessor, as a condition to giving its consent to any assignment or subletting, may require that the amount and adjustment structure of the rent payable under this Lease be adjusted to what is then the market value and/or adjustment structure for property similar to the Premises as then constituted.

**12.3 Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all rentals and income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by Lessee, and Lessor may collect such rent and income and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach (as defined in Paragraph 13.1) shall occur in the performance of Lessee's obligations under this Lease, Lessee may, except as otherwise provided in this Lease, receive, collect and enjoy the rents accruing under such sublease. Lessor shall not, by reason of this or any other assignment of such sublease to Lessor nor by reason of the collection of the rents from a sublessee, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee under such sublease. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor the rents and other charges due and to become due under the sublease. Sublessee shall rely upon any such statement and request from Lessor and shall pay such rents and other charges to Lessor without any obligation or right to inquire as to whether such Breach exists and notwithstanding any notice from or claim from Lessee to the contrary. Lessee shall have no right or claim against said sublessee, or, until the Breach has been cured, against Lessor, for any such rents and other charges so paid by said sublessee to Lessor.

(b) In the event of a Breach by Lessee in the performance of its obligations under this Lease, Lessor, at its option and without any obligation to do so, may require any sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any other prior Defaults or Breaches of such sublessor under such sublease.

(c) Any matter or thing requiring the consent of the sublessor under a sublease shall also require the consent of Lessor herein.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

## **13. Default; Breach; Remedies.**

**13.1 Default; Breach.** Lessor and Lessee agree that if an attorney is consulted by Lessor in connection with a Lessee Default or Breach (as hereinafter defined), \$350.00 is a reasonable minimum sum per such occurrence for legal services and costs in the preparation and service of a notice of Default, and that Lessor may include the cost of such services and costs in said notice as rent due and payable to cure said Default. A "Default" is defined as a failure by the Lessee to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to Lessee under this Lease. A "Breach" is

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is defined as the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure by Lessee to cure such Default prior to the expiration of the applicable grace period, shall entitle Lessor to pursue the remedies set forth in Paragraphs 13.2 and/or 13.3:

- (a) The vacating of the Premises without the intention to reoccupy same, or the abandonment of the Premises.
- (b) Except as expressly otherwise provided in this Lease, the failure by Lessee to make any payment of Base Rent or any other monetary payment required to be made by Lessee hereunder, whether to Lessor or to a third party, as and when due, the failure by Lessee to provide Lessor with reasonable evidence of insurance or surety bond required under this Lease, or the failure of Lessee to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee.
- (c) Except as expressly otherwise provided in this Lease, the failure by Lessee to provide Lessor with reasonable written evidence (in duly executed original form, if applicable) of (i) compliance with Applicable Law per Paragraph 6.3, (ii) the inspection, maintenance and service contracts required under Paragraph 7.1(b), (iii) the rescission of an unauthorized assignment or subletting per Paragraph 12.1(b), (iv) a Tenancy Statement per Paragraphs 16 or 37, (v) the subordination or non-subordination of this Lease per Paragraph 30, (vi) the guaranty of the performance of Lessee's obligations under this Lease if required under Paragraphs 1.11 and 37, (vii) the execution of any document requested under Paragraph 42 (assessments), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of Lessor to Lessee.
- (d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, that are to be observed, complied with or performed by Lessee, other than those described in subparagraphs (a), (b) or (c), above, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of Lessor to Lessee; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by Lessee if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- (e) The occurrence of any of the following events: (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.
- (f) The discovery by Lessor that any financial statement given to Lessor by Lessee or any Guarantor of Lessee's obligations hereunder was materially false.
- (g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a guarantor, (ii) the termination of a guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a guarantor's refusal to honor the guaranty, or (v) a guarantor's breach of its guaranty obligation on an anticipatory breach basis, and Lessee's failure, within sixty (60) days following written notice by or on behalf of Lessor to Lessee of any such event, to provide Lessor with written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the guarantors that existed at the time of execution of this Lease.

**13.2 Remedies:** If Lessee fails to perform any affirmative duty or obligation of Lessee under this Lease, within ten (10) days after written notice to Lessee (or in case of an emergency, without notice), Lessor may at its option (but without obligation to do so), perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee to Lessor upon invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made under this Lease by Lessee to be made only by cashier's check. In the event of a Breach of this Lease by Lessee, as defined in Paragraph 13.1, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach, Lessor may:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of the leasing commission paid by Lessor applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the prior sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Default or Breach of this Lease shall not waive Lessor's right to recover damages under this Paragraph. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or Lessor may reserve therein the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice and grace period required under subparagraphs 13.1(b), (c) or (d) was not previously given, a notice to pay rent or quit, as the case may be, given to Lessee under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by subparagraphs 13.1(b), (c) or (d). In such case, the applicable grace period under subparagraphs 13.1(b), (c) or (d) and under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession in effect (in California under California Civil Code Section 1951.4) after Lessee's Breach and abandonment and recover the rent as it becomes due, provided Lessee has the right to sublet or assign, subject only to reasonable limitations. See Paragraphs 12 and 36 for the limitations on assignment and subletting which limitations Lessee and Lessor agree are reasonable. Acts of maintenance or preservation, efforts to relate the Premises, or the appointment of a receiver to protect the Lessor's interest under the Lease, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located.

(d) The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

**13.3 Inducement Recapture in Event Of Breach.** Any agreement by Lessor for free or abated rent or other charges applicable to the Premises, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease to be performed or observed by Lessee during the term hereof as the same may be extended. Upon the occurrence of a Breach of this Lease by Lessee, as defined in Paragraph 13.1, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, and recoverable by Lessor as additional rent due under this Lease, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this Paragraph shall not be deemed a waiver by Lessor of the provisions of this Paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by the terms of any ground lease, mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within five (5) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding Paragraph 4.1 or any other provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

**13.5 Breach by Lessor.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph 13.5, a reasonable time shall in no event be less than thirty (30) days after receipt by Lessor, and by the holders of any ground lease, mortgage or deed of trust covering the Premises whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that the nature of Lessor's obligation is such that more than thirty (30) days after such notice are reasonably required for its performance, then Lessor shall not be in breach of this Lease if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

**14. Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes

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the or possession, which ever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the land area not occupied by any building, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken by the condemning authority bears to the total rentable floor area of the building located on the Premises. Notwithstanding the foregoing, Lessee shall occupy the only portion of the Premises taken by the condemning authority on which there is no building. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any compensation separately awarded to Lessee for Lessee's relocation expenses and/or loss of Lessee's Trade Fixtures. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of its net severance damages received, cover and above the legal and other expenses incurred by Lessor in the condemnation matter, repair any damages to the Premises caused by such condemnation, except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

#### 16. Broker's Fee.

16.1 The Brokers named in Paragraph 1.10 are the procuring causes of this Lease.

16.2 Upon execution of this Lease by both Parties, Lessor shall pay to said Brokers jointly, or in such separate shares as they may mutually designate in writing, a fee as set forth in a separate written agreement between Lessor and said Brokers (or in the event there is no separate written agreement between Lessor and said Brokers, the sum of \$\_\_\_\_\_ for brokerage services rendered by said Brokers to Lessor in this transaction.

16.3 Unless Lessor and Brokers have otherwise agreed in writing, Lessor further agrees that: (a) if Lessee exercises any Option (as defined in Paragraph 3.1) or any Option subsequently granted which is substantially similar to an Option granted to Lessee in this Lease, or (b) if Lessee acquires any rights to the Premises or other premises described in this Lease which are substantially similar to what Lessee would have acquired had an Option herein granted to Lessee been exercised, or (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of the term of this Lease after having failed to exercise an Option, or (d) if said Brokers are the procuring cause of any other lease or sale entered into between the Parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest, or (e) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then as to any of said transactions, Lessor shall pay said Brokers a fee in accordance with the schedule of said Brokers in effect at the time of the execution of this Lease.

16.4 Any buyer or transferee of Lessor's interest in this Lease, whether such transfer is by agreement or by operation of law, shall be deemed to have assumed Lessor's obligation under this Paragraph 16. Each Broker shall be a third party beneficiary of the provisions of this Paragraph 16 to the extent of its interest in any commission arising from this Lease and may enforce that right directly against Lessor and its successors.

16.5 Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any named in Paragraph 1.10) in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and that no broker or other person, firm or entity other than said named Brokers is entitled to any commission or finder's fee in connection with said transaction. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16.6 Lessor and Lessee hereby consent to and approve all agency relationships, including any dual agencies, indicated in Paragraph 4.10.

#### 16. Tenancy Statement.

16.1 Each Party (as "Responding Party") shall within ten (10) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

16.2 If Lessor desires to finance, refinance, or sell the Premises, any part thereof, or the building of which the Premises are a part, Lessee and all Guarantors of Lessee's performance hereunder shall deliver to any potential lender or purchaser designated by Lessor such financial statements of Lessee and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Lessor's Liability. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or in this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor at the time of such transfer or assignment. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Interest on Past-Due Obligations. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor within thirty (30) days following the date on which it was due, shall bear interest from the thirty-first (31st) day after it was due at the rate of 12% per annum, but not exceeding the maximum rate allowed by law, in addition to the late charge provided for in Paragraph 13.4.

20. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

21. Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease are deemed to be rent.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

#### 23. Notices.

23.1 All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice purposes. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for the purpose of mailing, or delivering notices to Lessee. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by written notice to Lessee.

23.2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone confirmation of receipt of the transmission thereof, provided a copy is also delivered via delivery or mail. If notice is received on a Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. Regardless of Lessor's knowledge of a Default or Breach at the time of accepting rent, the acceptance of rent by Lessor shall not be a waiver of any preceding Default or Breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted. Any payment given Lessor by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. Recording. Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees or taxes applicable thereto.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease.

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**39.3 Multiple Options.** In the event that Lessee has any Multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options to extend or renew this Lease have been validly exercised.

**39.4 Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option, notwithstanding any provision in the grant of Option to the contrary: (i) during the period commencing with the giving of any notice of Default under Paragraph 13.1 and continuing until the noticed Default is cured, or (ii) during the period of time any monetary obligation due Lessor from Lessee is unpaid (without regard to whether notice thereof is given Lessee), or (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessor has given to Lessee three (3) or more notices of Default under Paragraph 13.1, whether or not the Defaults are cured, during the twelve (12) month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of thirty (30) days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessor gives to Lessee three (3) or more notices of Default under Paragraph 13.1 during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

**40. Multiple Buildings.** If the Premises are part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of such other buildings and their invitees, and that Lessee will pay its fair share of common expenses incurred in connection therewith.

**41. Security Measures.** Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

**42. Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the resurvey of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

**43. Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

**44. Authority.** If either Party hereto is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days after request by Lessor, deliver to Lessor evidence satisfactory to Lessor of such authority.

**45. Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

**46. Offer.** Preparation of this Lease by Lessor or Lessor's agent and submission of same to Lessee shall not be deemed an offer to lease to Lessee. This Lease is not intended to be binding until executed by all Parties hereto.

**47. Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. The parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent or other rent payable under this Lease. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by an institutional, insurance company, or pension plan Lender in connection with the obtaining of normal financing or refinancing of the property of which the Premises are a part.

**48. Multiple Parties.** Except as otherwise expressly provided herein, if more than one person or entity is named herein as either Lessor or Lessee, the obligations of such Multiple Parties shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee.

SEE PARAGRAPH 49 ATTACHED HERETO

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN, IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. FURTHER, EXPERTS SHOULD BE CONSULTED TO EVALUATE THE CONDITION OF THE PROPERTY AS TO THE POSSIBLE PRESENCE OF ASBESTOS, STORAGE TANKS OR HAZARDOUS SUBSTANCES. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKER(S) OR THEIR AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE. IF THE SUBJECT PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, AN ATTORNEY FROM THE STATE WHERE THE PROPERTY IS LOCATED SHOULD BE CONSULTED.

The parties hereto have executed this Lease at the place on the dates specified above to their respective signatures.

Executed at \_\_\_\_\_  
on \_\_\_\_\_

by LESSOR: PCA METAL FINISHING, INC.  
1712 E. Rosslyn Ave.  
Fullerton, CA 92634

By \_\_\_\_\_  
Name Printed: Robert Williams  
Title: General Agent

By \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Tel. No. (\_\_\_\_) \_\_\_\_\_ Fax No. (\_\_\_\_) \_\_\_\_\_

Executed at \_\_\_\_\_  
on \_\_\_\_\_

by LESSEE: ORANGE COUNTY METAL PROCESSING, INC.

By \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: Manuel P. Reynolds  
OWNER

By \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Tel. No. (\_\_\_\_) \_\_\_\_\_ Fax No. (\_\_\_\_) \_\_\_\_\_

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NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: American Industrial Real Estate Association, 345 South Figueroa Street, Suite M-1, Los

09702  
WINEPA001439

ADDENDUM TO LEASE DATED JANUARY 1, 1995

PCA METAL FINISHING, INC., LESSOR

ORANGE COUNTY METAL PROCESSING, INC, LESSEE

49. Rent Adjustment. On each anniversary date of this Lease commencing January 1, 1996, the basic rent shall be adjusted to reflect the increase, if any, in the cost of living as reflected by the Consumer Price Index (CPI). The percentage of increase for the 12 months preceding each anniversary date shall be determined by using the CPI for the Los Angeles, Long Beach, Anaheim (Urban Consumers All Wage Earners) published by the Department of Labor (or similar index if that no longer is published) and the rent commencing each anniversary date shall be increased in direct proportion thereto.

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# Exhibit E-1


THIRTY DAY TERMINATION NOTICE

Manuel P. Reynoso  
Orange County Painting Co., DBA  
Orange County Metal Processing  
1711 E. Kimberly Avenue  
Fullerton, CA 92834

Within thirty (30) days after service of this notice, you must surrender possession of the premises to the undersigned, PCA Metal Finishing, Inc. or their authorized agent. Your failure to vacate the premises within thirty (30) days will cause the undersigned to initiate legal proceedings against you to recover possession of the premises and to seek a judgment for damages for each day of occupancy after the day of this notice and other damages, costs, and attorney's fees.

This notice is intended as a thirty (30) day notice, terminating your month to month tenancy. Prorated rent shall be due and payable through and including the date of termination of your tenancy under this notice.

Dated: June 11, 2001

  
Richard C. Ackerman,  
Attorney for PCA Metal Finishing, Inc  
2600 E. Nutwood Ave., Suite 800  
Fullerton, California 92831

# Exhibit E-2

**ACKERMAN, MORDOCK & BOWEN**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2500 EAST NUTWOOD AVENUE, SUITE 500

FULLERTON, CALIFORNIA 92631-2112

TELEPHONE (714) 992-2600

GARY E. MORDOCK  
DANIEL C. BOWEN  
RICHARD C. ACKERMAN

FAX NUMBER  
(714) 992-0799  
E-MAIL  
ackermor@ackmordm

June 29, 2001

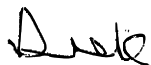
Robert H. Winters  
PCA  
1818 E. Rosslynn Ave.  
Fullerton, CA 92831

Re: Orange County Metal Processing  
Our 1093-01

Dear Bob:

The Thirty Day Notice was served on Mr. Reynoso on June 12, 2001. He has until July 12, 2001 to respond. If we have no response, we will proceed with the unlawful detainer action, which will remove him from the premises. If you have any questions, please call me.

Sincerely,



Richard C. Ackerman

RCA/mm

WINEPA001444